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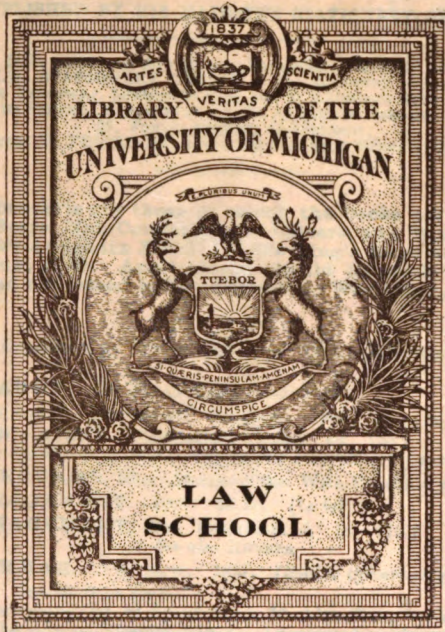


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PREFACE TO THE FIRST EDITION.

In July, 1879, Colonel the Rt. Hon. F. Stanley, M.P. (a), then Secretary of State for War, requested the Parliamentary Counsel Office to undertake the work of preparing Rules of Procedure, under Section 69 of the Army Discipline and Regulation Act, 1879, and also of superintending the preparation of a Manual, which should contain an edition of the Act and of the above Rules with notes, and form a text book on Military Law. The work was commenced at once by the Parliamentary Counsel Office.

The Rt. Hon. Hugh C. E. Childers, M.P., on becoming Secretary of State for War in 1880, approved of the continuance of the work; and the present book, which is the result, was provisionally circulated by his authority, and is now issued by the authority of his successor, the Rt. Hon. the Marquis of Hartington, M.P. (b)

Before the Rules of Procedure could be finally settled, the Army Discipline and Regulation Act, 1879, was repealed and replaced by the Army Act, 1881, and a complete revision of Section VI (Discipline) of the Queen's Regulations, 1885, also took place.

These changes explain the delay which unavoidably occurred in the completion of the work commenced in 1879.

The book contains chapters giving a general view of the Army Act, 1881, of the Rules of Procedure, and of the history of military law and organisation. Chapters have also been added on collateral matters, as the Law of Riot, &c., and the Customs of War. These form Part I of the book.

The Army Act, 1881, and the Rules of Procedure with explanatory notes follow; and these, with some additional forms, &c., complete Part II of the book. Part III contains miscellaneous enactments, regulations, and forms, including the Regimental Debts Act, and the regulations made under it; and a set of forms illustrative of the chapter on the Customs of War.

The chapters were written by Sir Henry Thring, K.C.B., Parliamentary Counsel (c); Mr. H. Jenkyns, C.B., Second Parliamentary Counsel (d); Mr. C. P. Ilbert, legal member

(a) Subsequently the Earl of Derby.

(b) Subsequently the Duke of Devonshire.

(c) Subsequently Lord Thring, K.C.B.

(d) Subsequently Sir H. Jenkyns, K.C.B., and Parliamentary Counsel.

of the Council of the Viceroy of India (a); Lt.-Col. Blake, R.M.L.I.; Mr. A. C. Meysey-Thompson, of the Inner Temple; and the Editor. The Notes to the Army Act and to the Rules were for the most part written by Mr. H. Jenkyns and the Editor; the valuable notes of the decisions of the Judge Advocate-General have been supplied from the office of the Judge Advocate-General, and the illustrations of the forms of charges have been framed by Col. Rocke, Deputy Judge Advocate. The Index was framed by Mr. W. L. Selfe, of Lincoln's Inn. (b)

The general editorship of the work was entrusted to Mr. G. A. R. FitzGerald, of the Parliamentary Bar, who has during its preparation been in constant communication with the office of the Parliamentary Counsel. Brigadier-General Elles, C.B., late Assistant-Adjutant-General (c), has rendered invaluable aid during its whole progress. The Editor is also much indebted to the criticisms and careful corrections of Mr. W. L. Selfe.

Acknowledgment also is due to Major-General R. Carey, C.B., late Deputy Judge Advocate, for the free use of his "*Military Law and Discipline*," a work on the Mutiny Act and Articles of War, which was undertaken and completed shortly before the old form of the Military Code became obsolete. On this account the work, although printed by authority at the War Office, was never published.

The debt which the army owes to the late Captain T. F. Simmons for his book on the Constitution and Practice of Courts-Martial, and to his son (sometime Major of Brigade, North-Eastern District, and now a Canon of York), the editor of subsequent editions, is well known. The book was the only complete modern treatise on the practice of courts-martial, which is almost as important as the military law itself.

Some of the editions were undertaken at the request of the military authorities, and in 1868 the editor was informed by the Adjutant-General that His Royal Highness the Field-Marshal Commanding-in-Chief recognised the efforts he had made in collecting the precedents, rules and axioms which guided the administration of military law. (d)

The value of the labours of the author and editor has been still further illustrated by the new Rules of Procedure, which in many instances embody the course of procedure suggested in "*Simmons on Courts-Martial*."

(a) Now Sir C. P. Ilbert, K.C.S.I., and Clerk of the House of Commons, late Parliamentary Counsel.

(b) Now Sir William Lucius Selfe.

(c) Subsequently Major-General Sir W. K. Elles, K.C.B.

(d) In the Queen's Regulations of 1868 the book was recommended as a useful book of reference, and in the General Order of 1st November, 1873, prescribing the examination of regimental officers previous to promotion, it was mentioned as useful for officers preparing for examination.

PREFACE.

When the Army Discipline and Regulation Act of 1879 passed, the Rev. Canon Simmons, learning that the Secretary of State contemplated the issue of a Manual of Military Law under authority, generously placed his book at the disposal of the Secretary of State for the good of the Service. The readers of the present Manual will see that extensive use has been made of the offer, and that much of "Simmons on Courts-Martial" survives in the following pages.

The book has been submitted to and carefully revised by the Rt. Hon. G. O. Morgan, Q.C., M.P., Judge Advocate-General. (a)

His Royal Highness the Field-Marshal Commanding-in-Chief has also been pleased to approve of the work.

An abbreviated edition of the work, in the form of a practical manual, will be issued as soon as possible.

May, 1884.

(a) Subsequently Sir G. O. Morgan, Bart.

ADVERTISEMENT TO THE SECOND EDITION.

This edition has been revised throughout by the Editor with the advice and assistance of Mr. Jenkyns and Colonel W. R. Lascelles, A.A.G.

November, 1887.

ADVERTISEMENT TO THE THIRD EDITION.

New Rules of Procedure were issued in 1893, chiefly in consequence of the amendments made in the Army Act, which fused together the Field General Court-Martial and the Summary Court-Martial; and these Rules, as well as the various amendments of the Army Act, are embodied in the present edition, which has again been revised by the Editor, with the advice and assistance of Colonel Hildyard, late Assistant Adjutant-General, and now Commandant of the Staff College. The Index has been completely re-cast in a form which, it is hoped, will increase its usefulness to Officers and others; and the Editor wishes particularly to acknowledge the ability and industry brought to this portion of the work by Mr. James Huggett, of the War Office.

July, 1894.

ADVERTISEMENT TO THE FOURTH EDITION.

The former Editor, Mr. G. A. R. FitzGerald, has been reluctantly obliged to relinquish the editorship, and Mr. F. F. Liddell (a) has been appointed to succeed him.

The chief changes in this edition are due to the application of the Criminal Evidence Act, 1898, to courts-martial. Rules for that purpose were published early in 1899. These have since been incorporated in a new edition of the rules, which also makes a few other slight changes in court-martial procedure.

In revising the book the Editor has had the benefit of the assistance of Major W. D. Jones, of the Wiltshire Regiment, and is especially indebted to him in respect of the revision of Chapters X and XI and the Appendices to the Rules.

Chapter VI has been revised by Sir C. P. Ilbert, who has been aided in the revision by Mr. W. Guy Granet, (b) Barrister-at-Law.

Chapter VII has been rewritten by the Editor with the assistance of Sir John Scott, K.C.M.G., Deputy Judge Advocate-General.

Chapter IX has been revised by Sir Henry Jenkyns, who is indebted for valuable suggestions to Mr. Oman, Fellow of All Souls College, and Mr. Hassall, Student of Christ Church, Oxford.

In Part III the Volunteer Acts have been added. A table of the contents of the chapters has been added, and the index recast in a shorter form.

August, 1899.

(a) Now Second Parliamentary Counsel.

(b) Now Sir W. Guy Granet.

ADVERTISEMENT TO THE FIFTH EDITION.

This edition has been edited by Mr. W. M. Graham-Harrison (a) in succession to the late Editor, Mr. F. F. Liddell, who resigned on being appointed Second Parliamentary Counsel.

The various amendments made in the Army Act since 1899 (especially the introduction of the punishment of detention), and the re-organisation of the system of commands and of the War Office, have necessitated a new issue of the Rules of Procedure (which is embodied in this edition), and a considerable number of alterations in other parts of the Manual.

The index is entirely new, and has been prepared in the War Office, under the supervision of the Editor.

The Editor is indebted to Mr. H. W. C. Davis, Fellow of Balliol College, Oxford, for several corrections in Chapters II and IX.

The Territorial and Reserve Forces Act, 1907, did not become law till after all the book was in type, and in consequence it has been found impossible, without unduly delaying the issue of this edition, to insert in Chapter XI or elsewhere an account of all the alterations effected by that enactment.

November, 1907.

(a) Now Solicitor to the Board of Customs and Excise.

ADVERTISEMENT TO THE SIXTH EDITION.

This edition has been edited by the Hon. Hugh Godley, Mr. Graham-Harrison, the late editor, having resigned on his appointment as Solicitor to the Board of Customs and Excise.

The New Edition contains an entirely new chapter (Chapter XIV) on the laws and usages of war, which has been written by Col. J. E. Edmonds, C.B., and Mr. L. Oppenheim, LL.D.

Chapter XI has been largely re-written in consequence of the reorganisation of the Army which took place in 1908, and the same cause has led to considerable alterations in other parts of the Manual. For instance, in Part III the Enactments relating exclusively to the Militia, Yeomanry and Volunteers have been omitted. On the other hand, certain other Acts relating to military matters have been included, *e.g.*, the Official Secrets Act, 1911.

The Editor is under great obligations to Lieut. Cauvin of the War Office, who has rendered invaluable help both in the general revision of the Manual and especially in the re-writing of Chapter XI.

The Editor is also indebted to Mr. V. M. Coutts-Trotter, Barrister-at-Law, for valuable suggestions in connection with Chapters VI and VII; the consequential alterations in the text of those chapters have in each case received the approbation of the original authors.

The index has been revised in the War Office.

February, 1914.

NOTE.—In a work covering so much ground there must inevitably be errors; any corrections or suggestions will be gratefully received; they should be addressed to—

“The Editor
(Manual of Military Law),
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LIST OF ABBREVIATED REFERENCES

A.A.	Army Act.
A.A.A.	Army (Annual) Act.
A.F.	Army Form.
American Instructions				Instructions for the Government of the Armies of the United States in the Field, 1863.
A.O.	..	..	..	Army Order.
Ariga	..	..	..	La Guerre Russo-Japonaise au point de vue continentale et le droit International, by N. Ariga, 1908.
Bac. Abr.	..	..	..	Bacon's Abridgment of the Law, 5th edition, 1798.
Barn. & Adol.	..	..	..	Barnewall and Adolphus' Reports, King's Bench, 5 vols., 1830-34.
Barn. & Ald.	..	..	..	Barnewall and Alderson's Reports, King's Bench, 5 vols., 1817-22.
Barn. & Cr.	..	..	..	Barnewall and Cresswell's Reports, King's Bench, 10 vols., 1822-30.
Best and Smith			..	Best and Smith's Reports.
Brenet	..	..	..	La France et l'Allemagne devant le Droit International, 1870-71, by A. Brenet, 1902.
Bro. P. C.	..	..	..	Brown's Cases in Parliament.
Broderip & Bingham	..	..	..	Broderip and Bingham's Reports.
Burr	..	..	..	Burrow's Reports, 5th edition, 5 vols., 1812.
Calve	..	..	..	Le Droit International, by O. Calvo, 5th edition, 1896.
Campbell	..	..	..	Campbell's Reports.
Car. & Marsh.	..	..	..	Carrington & Marshman's Reports.
C. & P.	..	..	..	Carrington & Payne's Reports, 9 vols., 1823-41.
Christian's Blackstone.	..	..	..	Blackstone's Commentaries on the Laws of England, edited by Edward Christian, 4 vols., 1803.
Clode Mil. Forces	..	..	..	Clode's Military Forces of the Crown, 2 vols., 1869.
Cobbett, Parl. Hist.	..	..	..	Cobbett's Parliamentary History.
Coke Inst.	..	..	..	Coke's Institutes of the Laws of England, 4 vols., 1832 and 1817.
Comm. Journ.	..	..	..	Journal of the House of Commons.
Com. Dig.	..	..	..	Comyn's Digest of the Laws of England, 5th edition, 7 vols., 1822.
Cox Crim. Ca.	..	..	..	Cox's Criminal Cases.

Dowl. & B.	Dowling and Ryland's Reports.
East	East's Reports, 16 vols., 1801-14.
F. & F.	Foster and Finlason's Reports.
French Manual ..	Manuel de Droit International à l'usage des officiers de l'armée de terre, 3rd edition, 1898.
Geneva Conference Actes	Convention de Genève. Actes de la Conférence de Révision. Genève, 1906.
Geneva Convention ..	Convention for the Amelioration of the Condition of the Wounded and Sick of Armies in the Field.
Grose, Mil. Antiquities	Military Antiquities and History of Ancient Armour, by Capt. F. Grose, 1801.
Guelle	Précis des lois de la Guerre, by J. Guelle, vol. 1, 1884.
Hague Conference, 1899	Blue Book. Correspondence respecting the Peace Conference held at The Hague in 1899. C. 9534.
Hague Conference, 1907 Actes	Deuxième Conférence Internationale de la Paix. Actes et documents. The Hague, 1907.
Hague Rules	Annex to the Convention concerning the Laws and Customs of War on Land, 1907, entitled "Regulations respecting the laws and customs of war on land."
Hale, Hist. Com. Law..	Hale's History of the Common Law, 4th Edition.
Hallam, Const. Hist. ..	Constitutional History of England, by A. H. Hallam.
Hawkins	Hawkins' Pleas of the Crown, 2 vols. 6th edition, 1777.
Holtzendorff	Handbuch des Völkerrechts, edited by Dr. F. von Holtzendorff, vol. IV., 1889.
Hough, Mil. Prec. ..	Precedents in Military Law, by W. Hough, Lieut.-Col. E.I.C.S., 1855.
Jur. (N.S.)	Jurist (new series).
K.R.	The King's Regulations and Orders for the Army (1912 edition).
Kriegsbrauch	Kriegsbrauch im Landkriege (Kriegsgeschichtliche Einzelschriften), edited by the German Great General Staff (Military Historical Section). Berlin, 1902.
L.J. (N.S.)	Law Journal (new series).
Loening.. ..	Professor Loening's Articles in the "Revue Droit International," 1872 and 1873.
Longuet	Le droit actuel de la guerre terrestre, by Captain F. Longuet, 1901.
L.R., Ch. Div.	Law Reports, Chancery Division.
L.R., C.C.R.	Law Reports, Crown Cases Reserved.
L.R., Ex.	Law Reports, Exchequer.
L.R., H.L.	Law Reports, English and Irish Appeals (House of Lords).
L.R., P.C.	Law Reports, Privy Council Appeals.
L.R., Q.B.	Law Reports, Queen's Bench.

L.R., Q.B.D. .. ..	..	Law Reports, Queen's Bench Division.
L.R. [18] A.C. ..	..	Law Reports, Appeal Cases since 1890.
L.R. [18] Ch. ..	..	Law Reports, Chancery Division, since 1890.
L.R. [19] K.B. ..	..	Law Reports, King's Bench Division, since 1901.
L.R. [18] Q.B. ..	..	Law Reports, Queen's Bench Division, 1890 to 1901.
Lewin, C.C. .. ..	..	Lewin's Crown Cases.
Lords' Journ. .. ..	..	Journals of the House of Lords.
Lord Raymond.. ..	..	Lord Raymond's Reports, 2 vols. 4th edition, 1792.
Man. & Gr. .. ..	..	Manning and Granger's Reports.
M. & S. .. ..	..	Maule and Selwyn's Reports, 6 vols. 1814-29.
M. & W. .. ..	..	Meeson and Welsby's Reports, 16 vols. 1837-49.
Mod. Rep. .. ..	..	Modern Reports, 12 vols. 5th edition, 1793.
Moo. C.C. .. ..	..	Moody's Crown Cases Reserved.
Moore's Digest .. ..	..	A Digest of International Law, by J. B. Moore, Washington, 1906.
Neutrality Convention		Convention respecting the Rights and Duties of Neutral Powers and Persons, 1907.
Official Account of Franco-German War		The Franco-German War, 1870-71, translated by Major F. C. H. Clarke, London, 1874-84.
Opening of Hostilities Convention		Convention Relative to the Opening of Hostilities, 1907.
Oppenheim .. ..	..	International Law, by L. Oppenheim, vol. I., 1905; vol. II., 1906.
P.W. .. ..	..	Pay Warrant.
S.A.O. .. ..	..	Special Army Order.
Shower's Rep. .. ..	..	Shower's Reports, 2 vols. 2nd edition, 1794.
Smith, Lead. Ca. ..	..	Smith's Leading Cases, 11th edition.
Steph. Comm. .. ..	..	Stephen's Commentaries on the Laws of England, 4 vols. 14th edition, 1903.
Steph. Dig. Crim. Law		Digest of the Criminal Law, by Sir James Fitzjames Stephen, K.C.S.I. 6th edition, 1904.
Steph. Dig. Ev. .. ..	..	Digest of the Law of Evidence, by Sir James Fitzjames Stephen, K.C.S.I. 6th edition, 1904.
Stubbs, Constit. Hist. ..	..	Constitutional History of England, by William Stubbs, M.A. Regius Professor of Modern History, Oxford.
Takahashi .. ..	..	International Law applied to the Russo-Japanese War, by S. Takahashi (English edition), London, 1908.
Taunt. .. ..	..	Taunton's Reports (Common Pleas, 1807-19), 8 vols.
T.F. .. ..	..	Territorial Force.
T.F. Regs. .. ..	..	Regulations for the Territorial Force.
Thring .. ..	..	Chapter XIV., entitled "The Customs of War," by the late Lord Thring in the Manual of Military Law (1899 edition).
T.R. .. ..	..	Term Reports (Durnford and East), 4 vols. 1794-1809.

T.R.F. Act .. ..	..	The Territorial and Reserve Forces Act, 1907.
Von Widdern .. ..	..	Krieg an den rückwärtigen Verbindungen der deutschen Heere, 1870-71, by Colonel Cardinal von Widdern.
Washburne .. ..	..	An abstract from the official correspondence of E. B. Washburne, United States Minister to France, entitled "America's Aid to Germany," St. Louis, 1905. (It is therein stated that the official edition of the correspondence published by the Government Printing Office, 1878, has been out of print since 1884.)
W.B. .. ..	..	Weekly Reporter (Irish).
Well. Desp. .. ..	..	Wellington Despatches, 1838.
Wilson's Rep. .. ..	..	Wilson's Reports.

[*The Alterations made in the Army Act and in the Rules of Procedure since 1907, as well as in the edition of the Manual issued in that year, are denoted by black lines in the margin.*]

PART I.

CHAPTER I.

INTRODUCTORY.

1. The object of the present work is to assist officers in acquiring information in respect of those branches of law with which they have occasion to deal in the exercise of their military duties. Object of work.

2. Officers, as such, are concerned with the following laws :—

1. Military Law.

2. The Law Relating to Riot and Insurrection.

3. The Laws and Usages of War on Land.

Description of laws with which officers have to deal.

3. Military law is the law which governs the soldier in peace and in war, at home and abroad. At all times and in all places, the conduct of officers and soldiers as such is regulated by military law. Military law is contained in the Army Act (a), and the acts relating to the Reserve and Auxiliary Forces, supplemented by the Rules of Procedure, by the King's Regulations, by other regulations such, *e.g.*, as those for the Special Reserve and Territorial Force, by Royal Warrant, such, *e.g.*, as that relating to pay, promotion, &c., and by Army Orders. The Army Act is brought into operation annually by a separate statute generally known as the Army Annual Act (b). It is part of the Statute Law of England, and, with the considerable difference that it is administered by military courts and not by civil judges, is construed in the same manner and carried into effect under the same conditions as to evidence and otherwise, as the ordinary criminal law of England (c). It must be recollected throughout this work that the statute law referred to is the law as enacted by the Parliament of the United Kingdom, while the "common law" is the law which has not been "created or declared by express enactment, but developed by the Courts from principles founded in the 'custom of the realm,' or deemed so to be" (d). Description of military law.

4. There is not in England, as in many foreign countries, a special law defining the relations between the military and civil power in cases of riot and insurrection. Troops when called out to assist the civil power in these cases are under military law as soldiers, but they are also as citizens subject to the ordinary civil law of England to the same extent as if they were not soldiers. Their military character is superimposed on their civil character, and does not obliterate it (e). The rioters or insurgents are wholly under the ordinary civil law, and are in no respect subject to military law, or to the "customs of war." Troops employed against armed rioters are, it is true, rendered by the Army Act (f) subject to military law as if they were on active service, and the Description of law of riot and insurrection.

(a) 44 & 45 Vict., c. 58. The amendments made by the Army Annual Acts from 1872 down to 1913 are incorporated with it.

(b) See Ch. II, para. 35.

(c) See A. A. 127, 128, and R. F. 73 (B).

(d) Sir F. Pollock, in *Encycl. of English Law*, vol. III., p. 141.

(e) See Ch. XII, para. 1.

(f) A. A. 178 (6) and (7), and 190 (20).

Ch. I.

rioters were an enemy ; but this enactment relates only to the government of the troops. The rioters are an enemy only while actually resisting, and when force ceases to be used, the rioters, whether prisoners or otherwise, must be tried or otherwise dealt with according to civil law. The law, then, of riot and insurrection is not necessarily part of the military education of an officer, except in so far as some knowledge of it is useful as a guide for his own conduct, when required by his military obligations to assist the civil power.

Description
of laws and
usages of
war on land.

5. The laws and usages of war on land have effect only in the case of war. A commander of troops in time of war, and in occupation of a foreign country, or any part thereof, acts in two absolutely distinct capacities. First, he governs his troops by military law only ; secondly, he stands temporarily in the position of governor of the country or part of the country which he occupies. In this latter capacity he imposes such laws on the inhabitants as he thinks expedient for securing, on the one hand, the safety of his army, and, on the other, the good government of the district which, by reason of his occupation, is for the time being deprived of its ordinary rulers.

Their scope
and object.

6. The law thus administered by an occupying general to the inhabitants has been rightly defined as the will of the conqueror, in the sense that the legality or illegality of the laws he imposes cannot be determined by any human court, and that no appeal to a court of law lies from his judgment ; on the other hand, certain rules, depending in part on the practice of civilised nations and in part on express written agreement between them, have been established, to which officers are bound to conform in the administration of the territory which they occupy. These laws and usages of war also lay down certain regulations (which are binding between belligerents partly by virtue of international custom and partly in virtue of written agreements) as to the mode of conducting warfare and the necessary intercourse between combatant forces.

Arrange-
ment of
contents of
book.

7. Such being the laws and usages which this book professes to explain, it may be well to state shortly how it deals with these several subject matters.

Chapters I,
II.

8. This introductory chapter is followed by a chapter giving a short history of military law from the time of the Conquest down to the passing of the Army Act. It is hoped thus to show clearly the principles of English law applicable to the government of the army, and the steps by which the necessity for a statutory power to maintain discipline in the army in time of peace led gradually to the substitution in time of war of Articles of War, issued under the authority of the Mutiny Act, for Articles of War issued under the prerogative power of the Crown.

Chapters
III, IV, V, I

9. The third, fourth, and fifth chapters are occupied with an explanation of the disciplinary provisions of the Army Act, and of the procedure by which these provisions are enforced.

Chapters
VI, VII.

10. Military courts follow the law as to the admission and rejection of evidence which is in force in civil courts in England. The sixth chapter, therefore, contains a summary of the law of evidence as administered in ordinary criminal trials in England. The seventh chapter gives a summary of the English criminal law so far as it is applicable to members of the army. This chapter is necessary, inasmuch as most ordinary civil crimes, when committed by persons subject to military law, are cognisable by military courts at all times, and all of them are so cognisable when committed on active service, or out of His Majesty's dominions, or in

parts of His Majesty's dominions out of the United Kingdom, and at a distance from any competent criminal court. Ch. I.

11. Military courts and individual officers are, in respect of acts which are illegal or in excess of their jurisdiction, subject to the control of the superior civil courts. The eighth chapter is framed with a view of indicating to officers the extent of jurisdiction which they are entitled to exercise, either as members of courts-martial or individually, and the circumstances and mode in which their acts may be called in question. It is intitled "Powers of Courts of Law in relation to Courts-martial and Officers." Chapter VIII.

12. Parts II and III of the Army Act are concerned with "Regulation" in contradistinction to "Discipline," which forms the subject of Part I. These two parts—the one, Part II, relating to Enlistment, the other, Part III, relating to Billeting and Impressment of carriages—are dealt with in the ninth, tenth, and eleventh chapters; and occasion is taken to give there a sketch of the history and constitution of the Forces, with the view of assisting officers desirous of studying the subject. Chapters IX, X, XI.

13. Officers and soldiers have certain privileges in relation to the mode of making their wills, exemption from tolls and serving on juries, and otherwise. These are explained in the twelfth chapter. The scope and object of the thirteenth and fourteenth chapters, intitled "Summary of the Law of Riot and Insurrection" and "The Laws and Usages of War on Land" have been already stated at sufficient length. These fourteen chapters constitute Part I of the work. Chapters XII, XIII, XIV.

14. Part II of this manual consists of the Army Act and Rules of Procedure made under it, which are printed with notes, and are followed by the Rules for Field Punishment, some forms, memoranda, &c., relating to courts-martial, and the Orders in Council relating to discipline on board ship. Part III comprises the acts relating to the Reserve and Territorial Forces, and certain other miscellaneous acts, regulations, and forms relating to the military forces. Army Act and Rules.

15. It will be observed that no mention has been made of "martial law" among the branches of law with which this book deals. The reason for this will now be shortly explained; but in view of the great confusion attaching to the use of the term "martial law," its proper meaning must as a necessary preliminary be precisely ascertained. Explanation of expression "martial law."

"Martial Law," then, in the proper sense of the term, means the suspension of ordinary law and the government of a country or parts of it by military tribunals and must be clearly distinguished, in the first place from "military law," the nature of which is explained above in paragraph 3, and with which it has sometimes been identified (a), and in the second place from that "martial law" which forms part of the laws and usages of war.

The law of most foreign countries recognises an intermediate state between war and peace, known by the name of the state of siege, under which the ordinary law is suspended for the time being by proclamation, and the country is subordinated in whole or in part to military authority by proclamation, but such a state of things cannot exist under English law, which never pre-supposes the possibility of civil war, and makes no express provision for such contingencies. In short, although in the arbitrary times of our

(a) See Hale, *Hist. Com. Law*, p. 24, and speech of Lord Alverstone, C.J., in House of Lords, 24th April, 1902.

Ch. I. history attempts were made to apply military law to the civil population, such attempts have long been recognised to be illegal. Martial law, in the proper sense of the term, can be established in the United Kingdom or in a self-governing British Possession only by an Act of Parliament or of the local legislature (a).

It has, however, been well pointed out (b) that "the assertion that no such thing as martial law exists under our system of Government, though perfectly true, will mislead anyone who does not attend carefully to the distinction between two utterly different senses in which the term martial law is used" by modern English writers. In time of invasion or rebellion, or in expectation thereof, exceptional powers are often assumed by the Crown, acting usually (though by no means necessarily) through its military forces, for the suppression of hostilities or the maintenance of good order within its territories (whether the United Kingdom or British possessions); and the expression "martial law" is sometimes employed as a name for this common law right of the Crown and its servants to repel force by force in the case of invasion, insurrection, or riot, and to take such exceptional measures as may be necessary for the purpose of restoring peace and order (c).

The intention to exercise such exceptional powers and to take such exceptional measures is generally announced by the issue of a "proclamation of martial law;" but on the one hand such a proclamation is not necessary, as the right to exercise these powers depends on the actual circumstances and not on the proclamation; and on the other hand, the proclamation of itself in no degree suspends the ordinary law, or substitutes any other kind of law in its stead, but operates only by way of warning that the Government is about to resort, in a given district, to such forcible measures as may be necessary to repel invasion, or suppress insurrection, as the case may be. To obviate any question as to the legality of the measures taken for this purpose (whether or not they have been preceded by a proclamation of martial law) it has been usual to pass an Imperial or local Act of Indemnity, for the protection of those engaged, so far as the steps taken by them have been reasonably necessary for the purpose, and carried out in good faith, and for the confirmation of the sentences passed by military courts (d).

For the purposes of the soldier, it is not necessary to discuss the several questions, of great interest to the lawyer, which presented themselves for consideration in connection with the exercise of "martial law" during the war in South Africa: questions such as whether the fact of the ordinary courts of law being open is conclusive that there is no necessity for having recourse to military tribunals, and how far things done under a proclamation of martial law can ultimately be examined in the

(a) See the provisions made in Ireland by 39 George III. c. 11 (1799); 43 Geo. III. c. 117 (1803); 3 & 4 William IV. c. 4 (1833). In a British possession under the direct legislative authority of the Crown a proclamation of martial law by the Crown would be as effective as a Statute in the United Kingdom.

(b) Dicey, *Law of the Constitution*, 6th ed., p. 284.

(c) A full account of the right to use force to suppress riot or insurrection will be found in Ch. XIII, paras. 12 *et seq.*

(d) The above paragraph incorporates the substance of Article 18 ("Martial Law in the Home Territory") of the *Handbook of the Laws and Customs of War*, by Professor T. E. Holland, K.C., issued in 1904.

As to Acts of Indemnity, see (e.g.) the cases mentioned in Clode, *Mil. Forces*, II. pp. 163-173 and 511; the Cape Colony Indemnity Acts of 1900 and 1902; and the Natal Indemnity Acts of 1900 and 1901.

civil courts (a). It is only necessary to add that, when a proclamation of martial law has been issued, any soldier who takes, in accordance with the official instructions laid down for the guidance of those administering martial law, such measures as he honestly thinks to be necessary for carrying to a successful issue the operation of restoring peace and preserving authority, may rely on any question as to the legality of his conduct being subsequently met by an Act of Indemnity.

(a) See a discussion of these questions by Mr. G. G. Phillimore in *Encyc. of English Law*, vol. xiii., under title "Martial Law," and Note xii. in the Appendix to Dicey, *Law of the Constitution*; and generally on "martial law" ch. viii. of the same work.

CHAPTER II.

HISTORY OF MILITARY LAW.

Definition of military law.

1. Military law, as distinguished from Civil law, is the law relating to and administered by military courts, and concerns itself with the trial and punishment of offences committed by officers, soldiers, and other persons (*e.g.* sutlers and camp followers) who are from circumstances subjected, for the time being, to the same law as soldiers. This definition is to a great extent arbitrary, the term "military law" being frequently used in a wider sense, to include not only the disciplinary, but also the administrative law of the army, as, for instance, the law of enlistment and billeting. In this chapter, however, the term is used only in the restrictive sense above mentioned.

Object of military law.

2. The object of military law is to maintain discipline among the troops and other persons forming part of or following an army. To effect this object, acts and omissions which are mere breaches of contract in civil life—*e.g.*, desertion or disobedience to orders—must, if committed by soldiers, even in time of peace, be made offences, with penalties attached to them; while, on active service, any act or omission which impairs the efficiency of a man in his character of a soldier must be punished with severity.

Military law in early times consisted of Articles of War issued when war broke out.

3. In the early periods of our history military law existed only in time of actual war. When war broke out troops were raised as occasion required, and ordinances for their government, or, as they were afterwards called, Articles of War, were issued by the Crown, with the advice of the Constable, or of the Peers, and other experienced persons; or were enacted by the Commander-in-Chief in pursuance of an authority for that purpose given in his commission from the Crown (*a*). These Ordinances or Articles, however, remained in force only during the service of the troops for whose government they were issued, and ceased to operate on the conclusion of peace. Military law, in time of peace, did not come into existence till the passing of the first Mutiny Act in 1689.

Government of troops in time of war by Articles of War.

4. The system of governing troops on active service by Articles of War issued under the prerogative power of the Crown, whether issued by the King himself or by the Commander-in-Chief or other officers holding commissions from the Crown, continued from the time of the Conquest till long after the passing of annual Mutiny Acts (*b*), and did not actually cease till the prerogative power of issuing such Articles was superseded, in 1803, by a corresponding statutory power (*c*).

Account of early Articles of War.

5. Numerous copies of these Articles are, in existence, made on the occasions of the various wars, both foreign and domestic, in which England was from time to time involved. The earliest complete code seems to have been the "Statutes, Ordinances, and Customs" of Richard II, issued by him to his army in the ninth year of his reign (1385), and probably on the occasion of the war with France (*d*). These are followed by the statutes of Henry V made by him during his conquest of France (*e*). Domestic dissensions gave occasion for the orders for the English army promulgated by Henry VII, before the battle of Stoke (*f*); and

(a) Grose, Mil. Antiquities, ii. p. 53. See Commission in Rymer's *Fœdera*.

(b) See *Barwick v. Keppel*, 2 Wilson's Rep. 314.

(c) See Mutiny Act of 1803 (43 Geo. III. c. 20).

(d) See copy printed in Grose, Mil. Antiquities, ii. pp. 64 *et seq.*

(e) Grose, Mil. Antiquities, ii. p. 69.

(f) Grose, Mil. Antiquities, ii. p. 73.

in the Great Rebellion the King and the Parliamentary leaders alike governed their troops by Articles of War. On the side of the Crown, Articles or Ordinances of War, as they were then called, were established by the Earl of Northumberland, in 1639, for the regulation of the army of Charles I; whilst, in 1642, Lord Essex, the leader of the Parliamentary forces, under authority given by an ordinance of the Lords and Commons, put forth Articles of War almost in the same language as the Royal Articles of War (a). Articles of War were also issued by Charles II in 1666, when the first Dutch war was declared, and in 1672, upon the outbreak of the second Dutch war; and by James II in 1685, on the occasion of Monmouth's rebellion (b).

Ch. II.

6. The earlier Articles were of excessive severity, inflicting death or loss of limb for almost every crime. Gradually, however, they assumed somewhat the shape which they bore in modern times, and the Ordinances or Articles of War issued by Charles II in 1672 formed the groundwork of the Articles of War issued in 1878, which were consolidated with the Mutiny Act in the Army Discipline and Regulation Act of 1879, now replaced by the Army Act (c).

Severity of early Articles.

7. Attempts were made from time to time, especially during the despotic reigns of the Tudors, to enforce military law under the prerogative of the Crown in time of peace; but no countenance was afforded to such attempts by the law of England; and commissions for the execution of military law in time of peace issued by Charles I in 1625 and the following years gave rise to the declaration in 1628, contained in the Petition of Right (3 Cha. I, c. 1), that such an exercise of the prerogative was contrary to law. The law having been thus declared, the question of the legality of the Articles of War issued in 1639 came under the notice of the Council Board in July, 1640, and the lawyers and judges were all of opinion that martial law could not be executed in England "but when an enemy is really near to an army of the King's" (d). So, again, it was stated in Parliament by Mr. Secretary Coventry that the articles of 1672 were only to be executed abroad (e), and the operation of the Articles of 1685 was limited to the duration of Monmouth's rebellion (f). In short, the only direct assistance in the enforcement of military discipline given by the law before the passing of the first Mutiny Act was afforded by certain statutes enforceable before civil and not before military tribunals, which made desertion punishable as a felony (g).

Illegal attempts to enforce military law in time of peace.

(a) See these Articles set out in Clode, Mil. Forces, i. App. vi. and viii.

(b) Clode, Mil. and Martial Law, pp. 9-19. As to Articles of War by Will. III. see Clode, Mil. Forces, i. p. 503; and by Anne, 2 & 3 Anne, c. 20.

(c) A comparison of the ancient with the more modern Articles of War will show how slight are the changes which have been made in military law during a series of years. It is easy to trace in the Articles of Richard II. the germ of the Articles of 1878, and having regard to the changes in custom and manners, the difference in the character of the regulations is less than might have been expected.

(d) Clode, Mil. Forces, i. p. 23, and App. vii.

(e) Cobbett's Parl. Hist., iv. 619.

(f) Clode, Mil. Forces, i. p. 79, and App. xxiv.

(g) 18 Henry VI. c. 19 (1439), made it a felony for a soldier to leave his captain and the King's service without licence. 7 Henry VII. c. 1 (1490), repeated by 3 Henry VIII. c. 5 (1511), provided that if a soldier immediately retained by the King departed out of the King's service without licence of his captain, it should be deemed to be felony. See *The Case of Soldiers*, Coke's Reports, part vi. p. 27 (13 Eliz.), which decided that the first Act was obsolete, but that the second and third were perpetual. See p. 154, note (c); see also 2 & 3 Edward VI. c. 2 (revived by 4 & 5 Phil. & Mar. c. 3), which imposed punishments on soldiers furnished at the cost of others, for making away with their horses, and made their departure from service without offence punishable as felony, and provided also for the punishment of officers improperly discharging soldiers.

Ch. II.

Court of Chivalry—the origin of military courts.

Constitution of Court of Chivalry.

Civil jurisdiction of Court of Chivalry.

Criminal jurisdiction of Court of Chivalry.

Administration of military law by Court of Chivalry.

8. The origin of later military courts is to be found in the Court of Chivalry, the ordinary judges of which were the Constable, or Lord High Constable, who was originally the King's General; and the Marshal, or Earl Marshal, whose duty it was to marshal the army, and to ascertain whether the persons liable to serve the King in his wars fulfilled their services (a).

9. The Court of Chivalry formed part of the *Curia Regis*, or Supreme Court established in England by William the Conqueror. The *Curia Regis* was a Court in a double sense: first, in the sense of being composed of the great officers of State; and secondly, in the sense of being a judicial body, as each of the great officers had judicial authority over the officers and persons belonging to or having dealings with his department. In this division of jurisdiction the Constable or *Comes Stabuli*, or Master of the Horse, (to use the modern designation) was Commander-in-Chief of the army, and had allotted to him the army, and all persons and matters connected therewith: while he and the Marshal together constituted the Court of Chivalry which exercised both civil and criminal jurisdiction (b).

10. Its civil jurisdiction was that of a court of honour, and consisted in redressing injuries of honour, and correcting encroachments in matters of coat armour, precedence, and other distinctions of families. It also exercised jurisdiction in respect of contracts connected with war out of the realm, and in this respect gradually infringed on the jurisdiction of the ordinary courts, until such infringements were restrained, and the powers of the court were defined, by two Acts passed in the reign of Richard II. The first of these (8 Rich. II. c. 5, 1384) enacted, "that all pleas and suits touching the common law of the land, and which ought to be examined and discussed by the common law, shall not hereafter be by any means drawn or holden before the Constable and Marshal, but that the court of the said Constable and Marshal shall have that which belongeth to the said court;" while the second (13 Rich. II. stat. I, c. 2, 1389) declared the jurisdiction of the court to consist in the "cognizance of contracts touching deeds of arms, and of war out of the realm, and also of things that touch arms or war within the realm which cannot be determined nor discussed by the common law, with other usages and customs to the same matters pertaining."

11. The criminal jurisdiction of the Court, except in time of war, was confined to the punishment of murder and other civil crimes committed by Englishmen in foreign lands (c). In time of war, however, its jurisdiction was extended, and the court, which was more usually called the Court of the Constable, acquired somewhat of the character of a permanent court-martial, as it followed the march of the army, and punished summarily, and in accordance with the Articles of War for the time being in force, all offences committed by the troops.

12. Such being the jurisdiction of the Court, it is obvious that it must from time to time have been necessary, as, for instance, in case

(a) See an account of the duties of the Constable and Marshal, in Stubbs, *Constit. Hist. of England*, i. p. 338, notes 1 & 2. See also Grose, *Mil. Antiquities*, i. ch. 7.

(b) See as to the jurisdiction of the Court of Chivalry, Coke, 1 *Inst.* 74b; 4 *Inst.* 127; *Bac. Abr.* 5th edn., ii. p. 141; Hale, *Hist. Com. Law*, p. 40; *Comyn's Digest*, iii. p. 331; Christian's *Blackstone*, iv. p. 287.

(c) The Court seems to have infringed on the jurisdiction of the ordinary criminal courts as well as on that of the ordinary civil courts, and such infringement was restrained by statute in 1399 (1 Henry IV. c. 14).

of simultaneous military operations in different quarters, to provide for its exercise at different places at the same time, and consequently by different persons; and accordingly we occasionally find several Constables and Marshals holding office and exercising jurisdiction at the same time. It is not quite clear whether the several Constables and Marshals from time to time appointed exercised judicial functions in the administration of military law merely by virtue of their offices, or by virtue of special commissions from the Crown. Probably the power to administer such law was chiefly conferred by commissions (a), and the administration of military law was thus less affected than would otherwise have been the case by the extinction of the office of High Constable, as a permanent office, in the 13th year of the reign of Henry VIII (1521).

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13. In that year the office, which had in accordance with the general tendency of the great offices of State in early times, become hereditary in the family of the Bohuns, Earls of Hereford and Essex, was forfeited to the Crown on the attainder and execution of Edward, Duke of Buckingham, the then High Constable, and since that time a High Constable has never been appointed permanently, but only on occasions of coronations and like ceremonies (b). The office of Earl Marshal, on the other hand, long continued to be held only by grant from the Crown, and did not become hereditary till the 25th year of the reign of Henry VIII, when it was granted to Thomas Howard, Duke of Norfolk, and his heirs male, in which line it still continues.

Extinction of office of High Constable.

14. This change seriously affected the ordinary jurisdiction of the Court of Chivalry (c); but does not seem to have materially affected the administration of military law, which was subsequently provided for (as had probably been the case before the extinction of the office of High Constable), by commissions from the Crown, or by clauses inserted in the commissions of the Commanders-in-Chief authorising them to enact ordinances for the government of the army under their command, and to sit in judgment themselves, or appoint deputies for that purpose (d). These deputies consisted of officers, and out of their sittings there gradually arose a new form of military tribunal, under the denomination of a Court or Council of War, which sat at stated times under an officer of a certain rank, who was styled the President.

Administration of military law by virtue of commissions.

Councils of War.

15. The transition from a Council of War to Courts-Martial in their present form was a matter more of name than of substance.

Courts-Martial.

(a) Hale says (Hist. Com. Law, p. 40), "The Military Court held before the Constable and Marshal antiently, as the *Judices Ordinarii* in this case, or otherwise before the King's Commissioners of that jurisdiction as *Judices delegati*." See also Bac. Abr., ii. p. 152; and as to the appointment of Constables and Marshals, Grose, Mil. Antiquities, i. pp. 191 and 192. Eymar's *Fœdera*, annis 1399, 1400, and elsewhere.

(b) Coke, 1 Inst., 74b; 4 Inst. 127. Grose, Mil. Antiquities, i. p. 190.

(c) See Coke, 1 Inst., by Hargrave and Butler, 74b, note (1). The Earl Marshal undoubtedly exercised the civil jurisdiction of the Court of Chivalry for a long time after the extinguishment of the permanent office of the Constable. See as to the jurisdiction of the Earl Marshal's Court, a letter to Sir John Somers, Attorney-General, from Robert Plot, LL.D., Hearne's *Curious Discourses*, ii. p. 250. See also the case of *Oldis v. Donville*, Shower's Cases in Parliament, p. 58. The last commission to the High Constable to act as a criminal judge was issued by Charles I. in 1631, upon an appeal of treason brought by Donald, Lord Rae, against David Ramsay, Esq., for treasonable words and purposes. In this Court the accused was entitled to wager of battle; but on further reflection the King withdrew his commission and the duel was never fought. See Thomson, Mil. Forces of Great Britain and Ireland, pp. 38, 39. The Court of Chivalry has never been abolished by law. In consequence of an appeal of death in 1818, the wager of battle was shortly after abolished by law. *Ashford v. Thornton*, 1 Barn. and Ald. p. 405.

(d) Grose, Mil. Antiquities, ii. p. 80 *et seq.*

Ch. II. The exact time at which courts-martial under that name began to be held is not ascertained, but they are mentioned with the distinction of general and regimental courts-martial in the Articles of War issued on the outbreak of the Dutch War, in 1672, by Prince Rupert, as Commander-in-Chief, under the authority of a commission from Charles II (a). There was this difference between the earlier courts-martial and the military courts-martial of the present day, that in the earlier courts the general or governor of the garrison who convened the court ordinarily sat as President, and that the power of the Court was plenary, and their sentences were carried into execution without the confirmation required under the present law.

Military code in time of peace rendered necessary by establishment of standing army.

16. Before the establishment of a standing army no necessity existed for a military code in time of peace; but when, after the Restoration in 1660, such a force was established, the necessity of special powers for the maintenance of discipline began to be felt. The growth of the army was, however, always regarded with jealousy, and Parliament was therefore unwilling to confer such powers on the Crown until it became absolutely necessary to do so. The small number of men forming the garrisons maintained before the Rebellion, and the armies of Charles II and James II, were tolerated rather than sanctioned by Parliament, and were therefore governed without such powers, and rather as the retainers of a great man than as an army. For though in 1662 Charles II issued Articles for the government of his guards and garrisons, offences involving the penalty of death were expressly reserved for trial by the known laws of the land, or by special commission under the Great Seal by the advice of the judges and lawyers. Again, the Articles issued by James II in 1686, which provided for the punishment of offences by courts-martial, expressly prohibited the infliction of any punishment amounting to loss of life or limb in time of peace (b). Discipline, therefore, was naturally lax; and when on the accession of William and Mary the maintenance of the army was sanctioned by Parliament, the loose discipline and general disaffection prevalent among the troops led to special powers being granted for their coercion.

Occasion of passing of first Mutiny Act.

17. On the 1st March, 1689, in a debate in the House of Commons on a message from William and Mary, suggesting the suspension of the Habeas Corpus Act, the necessity was urged of a measure for the regulation of the army (c), and on the 13th leave was given to bring in a Bill to punish mutineers and deserters from the army for a limited time, and a committee was appointed to prepare it (d). Almost at the same time 800 men enlisted by James II, who had been ordered by William to embark for Holland, mutinied at Ipswich, and marched northward, declaring that James was their king, and that they would live and die by him; and this danger, which was reported to both Houses on the 15th March (e), doubtless facilitated the passing of the Bill, which was introduced into the House of Commons on the 18th, and having passed through all its stages by the 28th, was passed by the House of Lords on the same day, and received the Royal Assent on the 3rd April (f).

(a) See Code printed in 1866 by the Royal Commission on Recruiting the Army, Parl. Papers, 1867, Art. 59, p. 241.

(b) Memorandum by Mr. Clode.

(c) Cobbett's Parl. Hist., v. [p. 154, 155.

(d) 10 Comm. Journ. 47.

(e) Cobbett's Parl. Hist., v. pp. 129-132.

(f) 10 Comm. Journ., 49, 52, 53, 64, 67, 69; 15 Lords Journ. 164, 166.

18. This Bill, which is known as the first Mutiny Act (1 Will. & Mary, c. 5), was prefaced by a preamble declaring the necessity for and the objects of the Act in terms which were repeated without substantial alteration in each subsequent Mutiny Act until the year 1878, and have now been transferred to the preamble of the annual Act bringing the Army Act into force (a). Mutiny and desertion when committed by persons in their Majesties' service in the army were made punishable by death or such other punishment as by a court-martial should be inflicted. Power was given to their Majesties or the general of their army to grant commissions for summoning courts-martial for punishing such offences, and it was further provided that the Act should not extend to the Militia, and should not exempt any officer or soldier from the ordinary process of law. The duration of the Act was limited to seven months, from the 12th April, 1689, to the 10th November in the same year.

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Objects and scope of first Mutiny Act.

19. On the 19th October, 1689, Parliament reassembled, and a second Mutiny Act (1 Will. & Mary, sess. 2, c. 4) was passed during the session, which received the Royal Assent on the 23rd December, and was ordered to come into force on the 20th, so that an interval of more than a month occurred between the lapse of the first and the coming into force of the second Act (b).

Second Mutiny Act.

20. Successive Mutiny Acts, with the exception of certain short intervals, were subsequently passed annually from the year 1690 to the year 1878 (c).

Succession of Mutiny Acts till 1878.

21. To indicate in detail the changes which took place in the various Mutiny Acts from the first in 1689 to the termination of the series in 1879, on the passing of the Army Discipline and Regulation Act, would be out of place in the present work; but it may be useful to point out the various periods, so to speak, in military legislation, and the principal changes which took place from time to time, until military law assumed the form which it bears in the Army Act.

Periods in Mutiny Act worthy of observation.

22. The first period lasted till 1712. During this period the Mutiny Acts did not extend to the dominions of the Crown abroad (d), and the principal offences punishable under them were mutiny and desertion; but no difficulty was felt from the narrow extent of the statutory provisions, inasmuch as the nation was at war during almost the whole period, and the main body of the army was in consequence on active service, and was governed by Articles of War issued by the Crown in pursuance of the prerogative.

From 1689 to 1712.

(a) This preamble emphatically states: (1) That the raising or keeping a standing army within the United Kingdom in time of peace, unless it be with the consent of Parliament, is against law. (2) That no man can be fore-judged of life or limb, or subjected in peace to any kind of punishment within this realm by martial law, or in any other manner than by the judgment of his peers, and according to the known and established laws of the realm. See the text of the Army (Annual) Act, *infra*, pp. 367, 368.

(b) Copies of the Mutiny Acts to the end of the reign of Anne will be found in the Record Edition of the Statutes. A copy of the first Mutiny Act will also be found in Clode, *Military and Martial Law*, Appendix A, p. 182; *Mil. Forces*, i. p. 499; also in Grose, *Mil. Antiquities*, ii. p. 73.

(c) The Mutiny Act of 1690 expired on the 20th December, 1691, and the next Act passed on the 14th March, 1692, but it was ordered to be in force from the 10th of that month. The Act of 1694 expired on the 1st March, 1695, but was continued in force from the 10th April, 1695, to the 10th April, 1696, by an Act passed on the 22nd April, and having therefore a retrospective operation. Again, there was a lapse from the 10th April, 1698, to the 20th February, 1702, Grose, i. p. 64; and the Record Edition of the Statutes. See also table in Clode, *Mil. Forces*, i. pp. 389-391. The authorities for the statements as to the Mutiny Acts are an analysis of these Acts prepared by Mr. W. L. Selfe (now Sir William Selfe), of Lincoln's Inn, and a memorandum by Mr. Clode on the Articles of War and Mutiny Acts.

(d) The Act was extended to Ireland in 1702 (13 & 14 Will. III. c. 2), and to Scotland in 1707 (7 Anne, c. 4).

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Lapse of
Mutiny Act
from 1698
to 1702 in
time of
peace.

Renewal of
Act in 1702.

23. From 1698 to 1702 the nation was at peace, and the Mutiny Act was allowed to drop. The greater part of the army was disbanded at the same time, and though the King was allowed by statute (10 Will. III, c. 1) to maintain 7,000 troops in England and 12,000 in Ireland, no special powers were conferred upon him for their government.

24. On the renewal of hostilities in 1702, the Mutiny Act was revived, and extended to Ireland; and in the next year clauses were added for the better enforcement of discipline abroad, which provided that certain offences committed abroad should be triable in England as treason or felony. These clauses, however, were accompanied by a proviso saving the power of the Crown to make Articles of War and constitute courts-martial and inflict penalties by sentence or judgment of the same beyond the seas in time of war, and by a clause empowering the Crown to grant commissions for holding courts-martial within the realm, by which persons committing crimes out of the realm against the Articles of War, and not tried by courts-martial before their return, might be tried and punished according to the Articles of War (a).

Power to
make
Articles of
War bind-
ing on the
army in
time of
peace when
out of the
Kingdom,
conferred
by Mutiny
Act of 1712.

25. On the conclusion of the Peace of Utrecht in 1712, the Mutiny Act was again allowed to expire, and was replaced by an Act "for better regulating the forces to be maintained in Her Majesty's service," by which mutiny, desertion, and certain other offences were made punishable by such punishments as a court-martial should adjudge, not extending to life or limb; power being at the same time given to inflict by sentence of court-martial corporal punishment not extending to life or limb, on soldiers for immoralities, misbehaviour, or neglect of duty. The operation of this Act was restricted to Great Britain and Ireland; but at the same time the difficulty was felt of maintaining discipline amongst the troops in the colonies and elsewhere out of the kingdom, as the prerogative power of governing such troops by Articles of War had been suspended by the conclusion of peace. A statutory power was therefore given to the Crown to make Articles of War and constitute courts-martial in any of Her Majesty's dominions beyond the seas, or elsewhere beyond the seas, "in such manner as might have been done by Her Majesty's authority beyond the seas in time of war" (b).

Power
extended by
Mutiny Act
of 1715.

26. On the breaking out of the rebellion in 1715, difficulties arose in maintaining discipline among the troops serving in the kingdom. For though troops serving elsewhere in the dominions of the Crown might be dealt with under statutory Articles of War, which could impose death for the most serious military offences, the troops in the kingdom were under a different law. The then existing Mutiny Act (c), by imposing a punishment for the most serious military offences, had superseded the prerogative power of making Articles of War in respect of those offences, though committed by troops engaged in war by reason of the rebellion, but as the punishment under the Act was not to extend to life or limb, it was insufficient to maintain discipline. Accordingly an Act was passed in 1715 (d), reimposing the punishment of death for mutiny, desertion, and the offence now known as fraudulent enlistment, in Great Britain and Ireland, and conferring on the Crown

(a) 13 & 14 Will. III, c. 2; 1 Ann. stat. 2, s. 20 (c. 16 in Ruffhead).

(b) 12 Ann. c. 13, in the Record Edition of the Statutes (c. 12 in Ruffhead).

(c) 1 Geo. I. stat. 2, c. 3.

(d) 1 Geo. I. stat. 2, s. 9.

statutory power to make "Articles for the better government of His Majesty's forces, and inflicting penalties to be proceeded upon to sentence or judgment in courts-martial to be constituted pursuant to this Act."

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27. Subsequently (a), the two powers of making Articles of War for the troops in the kingdom and for those in the other dominions of the Crown were combined, and in the Act of 1718 (b) received the form which was retained until 1803. The Act of 1718 conferred on the Crown a power to make Articles of War and constitute courts-martial with power to try offences under such articles, and inflict penalties by judgment of the same, "as well within the kingdoms of Great Britain and Ireland, as in any of His Majesty's dominions beyond the seas." The Articles of War made under the Act of 1712 and subsequent Acts not being limited to the time of war, applied to the troops also in time of peace.

Mutiny Act of 1718.

28. At about the same time the provisions of the Mutiny Act, which enacted death or corporal punishment for mutiny, desertion, and other specified offences, and which had previously been restricted to offences committed in Great Britain or Ireland, were extended to some of those offences if committed in His Majesty's dominions abroad, and to others wherever committed (c); and the Act and statutory power were subsequently re-enacted annually in this form, without material alteration, until 1802 (d).

Extension of Mutiny Act in Colonies.

29. By these successive changes the Crown gradually acquired a complete statutory power for the government of the army in time of peace, whether at home or in the colonies, by means of the Mutiny Act and the Articles of War made thereunder, co-extensive with the prerogative power of governing troops serving in foreign countries in time of war by means of Articles of War made under the prerogative; and as further dominions abroad were gradually acquired, the Act and statutory Articles were from time to time extended, so as to provide for the enforcement of discipline among the garrisons maintained in such dominions (e). The Act and statutory Articles were not, however, extended to foreign countries, as it was still assumed that the army never could be in a foreign country except in time of war, and troops engaged in active service in such countries were governed as before by the prerogative Articles.

Power to govern by Act and statutory Articles in Kingdom and colonies in time of peace co-extensive with power to govern by prerogative Articles in foreign countries in time of war.

30. That this was so is clear from the case in 1761 of *Barvis v. Keppel* (f), in which the Court of King's Bench decided that neither the Mutiny Act nor the Articles of War made thereunder applied to the army when engaged in war abroad. It seems probable, however, that the Articles issued under the prerogative which governed the army when so engaged were the same in form as the statutory Articles which governed the army at other times, and hence arose the question, decided in the negative in the

Case of *Barvis v. Keppel*.

(a) 1 Geo. I. stat. 2, c. 34; 3 Geo. I. c. 2.

(b) 4 Geo. I. c. 4.

(c) Compare 1 Geo. I. stat. 2, c. 34; 3 Geo. I. c. 2; 4 Geo. I. c. 4; 9 Geo. I. c. 4.

(d) In 1781 (21 Geo. III. c. 8) the provisions of the Act enacting punishments for certain offences were extended to the specified offences wherever committed; but the power to constitute courts-martial was still restricted to the Kingdom and the dominions of the Crown abroad.

(e) The Act and Articles were extended to the Channel Islands in 1756-7 (30 Geo. II. c. 8), and to the Isle of Man in 1766 (6 Geo. III. c. 8); and in 1767 (7 Geo. III. c. 10) special provisions were made as to the constitution of courts-martial in the garrisons of Goree and Senegal, and detachments therefrom. Ireland was excluded from the operation of the Act, but not of the Articles, in 1781 (21 Geo. III. c. 8), a separate Mutiny Act for that country being passed in that year by the Irish Parliament (21 & 22 Geo. III. c. 43 (1)); but it was again included after the Union.

(f) 2 Wilson's Reports, 314.

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case referred to, as to whether the Mutiny Act and statutory Articles extended to the army when engaged in war in foreign countries.

Extension of Mutiny Act and statutory Articles to foreign countries in 1803.

31. In 1803, by 43 Geo. III, c. 20, the great change was made of extending the Mutiny Act and the statutory Articles of War to the army whether within or without the dominions of the Crown. This alteration also was made on the occasion of a peace—the Peace of Amiens—and was made, as appears from the Preamble to the Act, in order to provide for the government of the troops engaged in the late war who had not yet been brought home, and who could no longer be governed by prerogative Articles, the power of making such Articles having been suspended on the conclusion of peace.

Prerogative Articles finally superseded.

32. On the resumption of hostilities, the Act and statutory Articles might have been again restricted in their operation to the dominions of the Crown, and the troops engaged in foreign war might have been left to be governed as before by prerogative Articles. This course, however, was not adopted, but the Act and statutory Articles were applied in 1813 towards the close of the Peninsular War to the troops without as well as to those within the dominions of the Crown (a); and the prerogative power of making Articles of War in time of war was thus finally superseded by a statutory power. The law as then settled has been continued ever since, and the army, both in peace and war, was governed by the Mutiny Act and statutory Articles until the year 1879.

Army Discipline and Regulation Act, 1879.

33. This brings us to the Army Discipline and Regulation Act, 1879. The inconvenience of having a military code contained partly in an Act of Parliament and partly in Articles of War made under and deriving validity from that Act had long been felt, and led at length to the consolidation of the provisions of the Mutiny Act and Articles of War in one statute.

Army Act, 1881.

34. Two years later the Army Discipline and Regulation Act, 1879, was repealed, and re-enacted with some amendment in the Army Act of 1881.

Thus was accomplished, after the lapse of more than a century, a wish expressed by Mr. Justice Blackstone in his Commentaries, "That it might be thought worthy the wisdom of "Parliament to ascertain the limits of military subjection, and "to enact express Articles for the government of the army" (b).

Annual Acts.

35. The Army Act has of itself no force, but requires to be brought into operation annually by another Act of Parliament, (generally known as the Army (Annual) Act), thus securing the constitutional principle of the control of Parliament over the discipline requisite for the government of the army (c). These annual Acts afford opportunities of amending the Army Act, of which considerable use has been made.

(a) 53 Geo. III. c. 17, s. 148.

(b) Christian's Blackstone, i. p. 415.

(c) See A. A. 2.

CHAPTER III.

OFFENCES AND SCALE OF PUNISHMENTS.

1. Part I of the Army Act classifies under various heads the military offences formerly contained in the Mutiny Act and Articles of War. It includes all the offences for which officers or soldiers in their military capacity are punishable by a court-martial, with the exception of those relating to trafficking in commissions (a). Classification of military offences.

2. The principle adopted in classifying the strictly military offences is that of grouping together offences of a similar character, and ranging the various groups as between themselves in a manner intended to impress the soldier with their relative military importance. For example, the Act begins with *Offences in respect of Military Service* (ss. 4-6), and these are followed by the heading *Mutiny and Insubordination* (ss. 7-11), by way of showing that gross misbehaviour in the field, mutiny, and insubordination rank first among military offences. The above headings are followed by— Principle of classification.

Desertion, Fraudulent enlistment, and Absence without leave (ss. 12-15);

Disgraceful conduct (ss. 16-18);

Drunkenness (s. 19);

Offences in relation to Persons in Custody (ss. 20-22);

Offences in relation to Property (ss. 23, 24);

Offences in relation to False Documents and Statements (ss. 25-27);

Offences in relation to Courts-martial (ss. 28, 29);

Offences in relation to Billeting (s. 30);

Offences in relation to Impressment of Carriages (s. 31);

Offences in relation to Enlistment (ss. 32-34);

Miscellaneous Military Offences (ss. 35-40);

Lastly come *Offences punishable by ordinary Law* (s. 41) of which the most serious are only triable by courts-martial in certain circumstances and subject to certain restrictions (b).

3. For the most part the military offences are laid down by the Army Act in the same, or nearly the same, language as that of the former Mutiny Acts and Articles of War. Those which from their importance or comparative frequency require a more detailed notice than others, are dealt with in this chapter; the rest are explained, so far as necessary, in notes to the Act. Offences dealt with in this chapter.

4. *Mutiny and Insubordination*.—The term "mutiny" implies collective insubordination, or a combination of two or more persons to resist or to induce others to resist lawful military authority. A man cannot be charged generally with mutiny, or with an act of mutiny, but only with some one or more of the specific offences laid down in s. 7. If he has not brought himself within the terms of that section, his offence, however much it may tend towards mutiny, must be dealt with as insubordination, under s. 8 or s. 9, which afford ample powers for the purpose. Thus, where there is Definition of mutiny.

(a) A.A. 155.

(b) See Ch. VII, para. 2.

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an actual mutiny or a conspiracy to mutiny, all concerned in the mutiny or conspiracy can be tried under s. 7 for causing or conspiring to cause, or joining in the mutiny, as the case may be. If no mutiny or conspiracy exists, a man can only be tried under s. 7 on a charge of endeavouring to persuade some person in His Majesty's forces or in the navy to join in an intended mutiny, or of failing to inform his commanding officer of an intended mutiny.

Framing
charge of
mutiny.

5. In framing a charge therefore under s. 7, the specific act or acts which constitute the offence must always be alleged; and the offence is so grave that a charge for it should only be brought on very clear evidence. Cases of insubordination, even on the part of two or more, should, unless there appears to be a combined design on their part to resist authority, be charged under s. 8 or s. 9. If an insubordinate act were committed which could not be charged under any of the sections of the Act relating to mutiny and insubordination, it must be charged under s. 40 as an act to the prejudice of good order and military discipline. Provocation by a superior, or the existence of grievances, is no justification for mutiny or insubordination, though such circumstances would be allowed due weight in considering the question of punishment.

Definition
of sedition.

6. Sedition, in s. 7 of the Act, is the same offence as in the ordinary criminal law, and consists in doing any act or publishing any words tending to bring into hatred or contempt, or to excite disaffection against the Sovereign, or the government and constitution of the United Kingdom, or either House of Parliament, or the administration of justice; it is also seditious to excite His Majesty's subjects to attempt to procure otherwise than by lawful means the alteration of the law, or to incite any person to commit any crime in disturbance of the peace, or to raise discontent and disaffection among His Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects. A person is not guilty of sedition who acts in good faith, merely intending to point out errors or defects in the government or constitution or the administration of justice, or to promote alteration of the law by legal means, or to point out, with a view to their removal, matters which have a tendency to produce feelings of hatred between different classes of His Majesty's subjects. It is not, however, intended to imply that an officer or soldier is at liberty to enter on any such course of action or discussion, but simply to point out the legal meaning of the term sedition.

Offences of
disobedi-
ence to a
lawful
command.

7. Closely connected with the offence of mutiny is the offence of disobedience to a lawful command, which is punishable under s. 9 of the Act (a). No offences differ more in degree than offences of this class. The disobedience may be of a trivial character, or may be an offence of the most serious description, amounting, if two or more persons join in it, to mutiny. Accordingly the object of this section is to enable charges to be framed in such manner as to discriminate between different degrees of the offence.

Definition
of graver
offence of
disobedi-
ence.

8. The essential ingredients of the first and graver offence under the section are that the disobedience should *show a wilful defiance of authority*, and should be disobedience of a lawful command *given personally and given in the execution of his office by a superior officer*; in fact, it would ordinarily be such an offence as would be mutiny if two or more persons joined in it. In order to convict a man it must be shown (1) that a lawful command was given by a superior

(a) For the history of this enactment, see Clode, *Mil. Forces*, i. p. 155.

officer ; (2.) that it was given personally by such officer ; (3.) that it was given by such officer in the execution of his office (a) ; (4.) that the man disobeyed it, not from any misunderstanding or slowness, but so as to show a wilful defiance of his superior officer's authority. For example, a man not falling in for escort duty when ordered to do so by his non-commissioned officer, may have failed to hear the order or may be merely slow in executing it ; on the other hand, the refusal may be deliberate and obstinate, so as to show in the clearest manner an intention to defy and resist superior authority.

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9. The second and less grave offence laid down by the section consists of disobedience to any lawful command given by a superior officer, which is not accompanied by the essential elements of the graver offence. To constitute this offence it is essential that the disobedience should be wilful and deliberate, as distinguished from disobedience arising from forgetfulness or misapprehension, which can only be punished under s. 40 (b). The disobedience must have reference to the time at which the command is to be obeyed. If the command be a lawful command, and demands a prompt and immediate compliance, hesitation or unnecessary delay in obeying it may constitute disobedience fully as much as a positive refusal to obey, though mere omission or hesitation can seldom constitute the graver offence referred to in the preceding paragraph ; but if the command is of a prospective nature, a man, before he can be guilty of disobedience, must have had an opportunity to obey the command. For example, if the command is to turn out for parade in half an hour, then, until the expiration of that time, no offence of disobedience to a lawful command can be committed. If the soldier on receiving the command makes a reply implying an intention to refuse, and is put in the guard-room before the end of the half hour, he may be charged under s. 8 with using insubordinate language, or under s. 40 with conduct to the prejudice of good order and military discipline in respect of the improper language, but not with the offence of disobedience to a lawful command.

Of less
offence of
disobedi-
ence.

10. "Lawful command" means not only a command which is not contrary to the ordinary civil law, but one which is justified by military law ; in other words, a lawful military command, whether to do or not to do, or to desist from doing, a particular act. A superior officer has a right at any time to give a command, for the purpose of the maintenance of good order, or the suppression of a disturbance, or the execution of any military duty or regulation or for any purpose connected with the amusements and welfare of a regiment or other generally accepted details of military life. But a superior officer has no right to take advantage of his military rank to give a command which does not relate to military duty or usages, or which has for its sole object the attainment of some private end. Such a command, though it may not be unlawful, is not such a lawful command as will make disobedience to it criminal. In any case of doubt, the military knowledge and experience of officers will enable them to decide on the lawfulness or otherwise of the command.

What is a
lawful com-
mand.

11. If the command were obviously illegal, the inferior would be

Duty of
obedience.

(a) As to the meaning of "in the execution of his office," and "superior officer," see note 1 and 12 to A.A. 8.

(b) Even under s. 40, the neglect must be wilful or culpable and not merely arising from ordinary forgetfulness or error of judgment or inadvertence) (See note 4 to the section.

Oh. III. justified in questioning, or even in refusing to execute it, as, for instance, if he were ordered to fire on a peaceable and unoffending bystander. But so long as the orders of the superior are not obviously and decidedly in opposition to the law of the land, or to the well-known and established customs of the army, so long must they meet prompt, immediate, and unhesitating obedience.

Religious scruples.

12. Religious scruples, however *bona fide* they may be, afford no justification for neglect or refusal to obey orders. An officer cannot (for example) plead conscientious scruples as justifying a refusal to go into the trenches on a Sunday, or to pay marks of respect enjoined by superior authority to a religion different from his own

Desertion and absence without leave.

13. *Desertion, Fraudulent Enlistment, and absence without leave.*—A distinction is made by the Act between desertion and fraudulent enlistment. The latter, which is constituted a separate offence by s. 13, is dealt with hereafter.

The criterion between desertion and absence without leave is *intention*. The offence of desertion—that is to say, of deserting or attempting to desert His Majesty's service—implies an intention on the part of the offender either not to return to His Majesty's service at all, or to escape some particular important service as mentioned in para. 16; and a soldier must not be charged with desertion, unless it appears that some such intention existed. Further, even assuming that he is charged with desertion, the court that tries him should not find him guilty of desertion, unless fully satisfied on the evidence that he has been guilty of desertion as above defined. On the other hand, absence without leave may be described as such short absence, unaccompanied by disguise, concealment, or other suspicious circumstances, as occurs when a soldier does not return to his corps or duty at the proper time, but on returning is able to show that he did not intend to quit the service, or to evade the performance of some service so important as to render the offence desertion.

Evidence of intention not to return.

14. It is obvious that the evidence of intention to quit the service altogether may be so strong as to be irresistible, as, for instance, if a soldier is found in plain clothes on board a steamer starting for America, or is found crossing a river to the enemy; while, on the other hand, the evidence is frequently such as to leave it extremely doubtful what the real intention of the man was. Mere length of absence is, by itself, inconclusive as a test, for a soldier who has been entrapped into bad company through drink, or other causes, may be absent some time without any thought of becoming a deserter; but in the case above put, of a soldier found on board a steamer starting for America, there could be no doubt of the intention, though he might only have been absent a few hours.

Distance by which soldier may depart.

15. Nor can desertion invariably be judged by distance, for a soldier may absent himself without leave and depart to a very considerable distance, and yet the evidence of an intention to return may be clear; whereas he may scarcely quit the camp or barrack yard, and the evidence of intention not to return (by the assumption of a disguise, for example, and other circumstances) may be complete.

Evasion of important service.

16. A man who absents himself in a deliberate or clandestine manner, with the view of shirking some important service though

he may intend to return when the evasion of the service is accomplished, is liable to be convicted of desertion just as if an intention *never* to return had been proved against him. Thus if a man on the eve of the embarkation of his regiment for service abroad, or when called out to aid the civil power, conceals himself in barracks, the court will be quite justified in presuming an intention to escape the important service on which he was ordered and in convicting him of desertion.

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17. A man may be a deserter though his absence was in the first instance legal (e.g., being authorised by leave on furlough), the criterion being the same in all cases, namely, the intention of not returning. It is clearly shown by the King's Regulations, and by the explanation on the furlough itself, that a soldier on furlough is still under orders, and that, if without leave, he quits the place to which he has permission to go, or if he disguises or conceals himself so that orders cannot reach him, or if he goes on board a ship about to sail for a distant port, he is liable to be tried and convicted of desertion though on furlough at the time. A soldier, for example, at Ipswich, who obtains a pass to Bristol, and during his leave when without permission to go to Liverpool is found there in civilian costume on board a ship about to sail for New York, may be tried for desertion. It would be for him to show that the absence without leave from Bristol proved against him was innocent, and had nothing to do with desertion.

Desertion by man on furlough.

18. If a soldier commits an act which is apparently a prelude to, or an attempt at, desertion, although no actual absence can be proved, as if he is caught in the act of slipping past a sentry, or climbing over a barrack wall in plain clothes, he may be charged with an attempt to desert.

Attempt to desert.

19. The fact that a soldier surrenders is not proof by itself that he intended to return, even though he is in uniform at the time of surrender. The prosecutor may not be able to prove where the man has been during his absence, but evidence that the military patrols had searched carefully in the neighbourhood of the barracks without finding him, would show that he must have gone to a distance or concealed himself. From this and other circumstances the court may infer that he surrendered because he could not effect his contemplated escape.

Soldier surrendering himself.

20. A soldier charged with desertion may be found guilty of attempting to desert or of being absent without leave; and, on the other hand, a soldier charged with an attempt to desert may be found guilty of actual desertion or of being absent without leave (a). In any case of doubt as to whether one or the other offence has been committed, the court should find the accused guilty of the less offence. A soldier guilty of desertion forfeits, if serving on his original engagement, the whole of his prior service, and, if serving on a re-engagement all prior service rendered during the period of re-engagement, and is liable to serve for the term of his original enlistment, or re-engagement as the case may be, reckoned from the date of his conviction, or of the order dispensing with his trial (b).

General provision as to desertion.

21. As a general rule, a soldier quitting his corps and enlisting in another should not be charged with desertion, but with fraudulent

Fraudulent enlistment.

(a) See A.A. 56 (3), (4).

(b) A.A. 79 and 84. As to court of inquiry, in case of absence without leave for twenty-one days, see 72; and as to procedure in case of confession of desertion or fraudulent enlistment, see 73.

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enlistment, for the very act of his enlisting in another corps (unless in an exceptional case) shows that he did not intend to leave His Majesty's service. On the other hand, if he does so for the purpose of avoiding a particular service—*e.g.*, service abroad—or if during his absence he conducted himself so as to show that when he quitted he did not intend to return to the service, but changed his mind—he is, as above pointed out, guilty of desertion, and may be tried accordingly. But, as already observed, it will suffice, except in very special cases, to prefer a charge for fraudulent enlistment alone.

Stealing
and em-
bezzlement,
when tried
by court-
martial.

22. *Stealing and Embezzlement.*—Ordinary thefts from civilians are left by the Act to be dealt with by the civil courts, or they may be tried by court-martial under s. 41 as civil offences; but the offence of stealing, embezzling, or fraudulently misapplying the money or property of an officer or soldier or of any military institution has, in accordance with long-established practice, been made expressly punishable as a military offence (a).

Stealing
from a
comrade.

23. Stealing from a comrade is regarded as peculiarly disgraceful, seeing that in the daily routine of barrack life, soldiers must constantly leave their arms, accoutrements, or kits exposed, as well as private property, such as money, watches, pipes, &c., trusting to the honour of their comrades. When missing articles are private property, and are found in the possession of another, there is a strong presumption that they were stolen, especially if the accused absented himself, and is discovered to have pawned or sold them. But it must be recollected that an intention to steal is essential, and that the mere taking of an article without that intent is not criminal. So that if a soldier openly takes an article belonging to another, and returns it, or, though he absented himself, did not secrete the article or make any attempt to sell or pawn it, then the presumption is against his being guilty of stealing. It will often be desirable to obtain evidence as to any custom of borrowing which may have prevailed in a particular room, or as between the accused and the owner of the article or other comrades, and as to any other circumstance tending to show whether the accused might reasonably have supposed that his taking the article would not be objected to. The restoration of an article does not, of course, by itself prove that the article was not stolen, but evidence of the above nature will often go far to show whether an article was in fact stolen or not. Again, the accused may show that he obtained the articles in a *bond fide* transaction, or that he found them apparently without an owner, and without any name or mark on them by which the owner could be found. The fact of lost articles being found in the valise, or in the bed of a soldier, is not by itself proof that he stole the articles. They might have been put there unknown to him, perhaps intentionally by the real thief. A soldier should not in such a case be tried for stealing unless there are other circumstances from which it might be inferred that the articles were in his valise or bed with his knowledge (b). The improper possession

(a) See A.A. 17 and 18 (4). Theft from a comrade will as a rule be tried by court-martial under A.A. 18 (4) (K.R. 556); but in special circumstances, such as those in the case of *Marks v. Frogley*, L.R. [1898] 1 Q. B. 888, where the theft was alleged to have been committed immediately before a volunteer corps quitted the camp where they had been trained with regulars, may be tried by a civil court.

(b) See Ch. VI, paras. 22-25.

In the case of a soldier accused of theft evidence that he had on a previous occasion stolen other articles from a comrade is not admissible for the purpose of proving the fact that he took the articles alleged to have been stolen. See Ch. VI, 93 A.

by one soldier of a comrade's necessities, where there is no evidence of theft, is a different question: it is not an offence against the comrade, but is an offence against military rules, and may, irrespectively of any fraudulent intent, be punished under s. 40.

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24. The offence of embezzlement under the Act is committed where one entrusted with the care or distribution of public or regimental money or property, and, being thus in lawful possession of it, appropriates it to the use of himself or of some person connected with him (a). A subordinate is frequently tempted to commit the offence, if he finds that his transactions are not regularly supervised, and that minor irregularities pass unnoticed. All officers, therefore, who have to do with the supervision of canteens or the accounts of pay serjeants or other non-commissioned officers, should be most careful to see that the forms and regulations of the service are strictly and invariably observed. Nothing can be more unjust and inexcusable than for an officer, through indolence or carelessness in doing his own duty, to expose a soldier to temptation which may prove his ruin.

Embezzlement

25. *Drunkennes.*—Section 19 of the Army Act creates only one offence, viz., drunkenness, and in all cases, whether the act was committed on duty or not on duty, the charge should be "drunkenness." If the offence was committed when on duty, or after the accused had been warned for duty, the fact that the offence was so committed and the nature of the duty should be specified in the particulars of the charge.

Drunkennes.

Drunkennes includes intoxication from the effects of opium or any similar drug as well as from liquor. Under the Army Act, an officer should be tried for the specific offence of drunkenness, whether on duty or not on duty, as the case may require, instead of being charged, as formerly, in the case of drunkenness not on duty, with conduct unbecoming the character of an officer and a gentleman.

26. A non-commissioned officer, no less than a commissioned officer, may be tried by a court-martial for even a single act of drunkenness, whether committed on duty or not on duty. The commanding officer has, however, complete discretion whether to send the offence for trial or not, as the obligation of dealing summarily with a private soldier charged with drunkenness otherwise than under aggravating circumstances, does not extend to the case of a non-commissioned officer (b).

27. A private soldier also can be tried for any act of drunkenness, whether on duty or not on duty, by a court-martial under s. 19; but the practical effect of this section is materially modified by s. 46, which declares that the commanding officer shall deal summarily with the case of a soldier charged with drunkenness, unless he has been guilty of drunkenness on not less than four occasions in the preceding 12 months, or unless the offence was committed on active service or on duty, or after the offender was warned for duty, or when the offender was by reason of drunkenness found unfit for duty. Although, therefore, under s. 19 courts-martial have complete jurisdiction to try and punish cases of drunkenness which are directed to be dealt with summarily under s. 46, and this jurisdiction is not limited by s. 46, yet a commanding officer will be guilty of a grave breach of duty and of an

Jurisdiction of court-martial to try drunkenness of private soldier.

(a) See A.A. 17 and note; and as to embezzlement generally, see Ch. VII, para. 59. As to orders for restitution of stolen or embezzled property see A.A. 75.

(b) A.A. 46, 183 (1). And see K.R. 499.

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Drunken-
ness on
duty.

offence against the Act, if he disregards the directions in s. 46 with respect to dealing summarily with such a case of drunkenness charged against a private soldier (a).

28. In a military point of view, drunkenness on duty is considered in reference to the soldier being fit or not fit for duty. There cannot be any distinction such as drunk, or very drunk, when on duty. Soldiers therefore are carefully inspected before being put on duty, so as to ascertain their fitness. If the superior, knowing a man to be drunk, out of good nature allowed him to proceed with the duty, or, if through carelessness, he passed a man as sober when he was not sober, then, as a rule, in awarding punishment, the man should not be treated as having been drunk on duty.

A soldier on the line of march is on duty from the beginning to the end of the march, and if drunk in his billet or halting place may be dealt with as having been drunk on duty (b).

Soldier un-
expectedly
called on
duty.

29. In ordinary routine circumstances, a soldier unexpectedly called on to perform some duty, for which he has not been warned—as (for example) if summoned from a canteen or from some public sports—and found to be unfit for duty, should in practice be dealt with as for ordinary drunkenness.

Evidence
to be given
of the
circum-
stances.

30. In the offence of drunkenness the attendant circumstances affect the amount of punishment, and evidence should be given in all cases as to the circumstances (see para. 23). Evidence will also be given as to whether the drunken man was riotous or not, so that punishment may be apportioned accordingly. Nothing can justify a soldier striking or offering violence to a superior, and great care is therefore enjoined to be taken to avoid bringing drunken soldiers in contact with their superiors. Mere abusive and violent language used by a drunken man, as the result of being taken into custody, should not be used as a ground for framing a charge of using threatening or insubordinate language to a superior officer (c). If a court-martial be required at all, discipline will generally be upheld by merely bringing the man to trial either for drunkenness (if he is liable to be tried) or for an offence under s. 40, treating the language as in the nature of riotous conduct only, and to that extent aggravating the offence. An offence of drunkenness committed when the offender is not on duty or has not been warned for duty is as a rule sufficiently dealt with by the imposition of a fine (d).

Drunken-
ness con-
sidered in
relation to
other
offences.

31. Drunkenness often has to be considered by courts-martial not as an offence itself, but in relation to greater offences, which it accompanies. It is a principle of English law that drunkenness is no excuse for crime. But where intention is of the essence of the offence, drunkenness may justify a court-martial in awarding a less punishment than the offence would otherwise have deserved, or reduce the offence to one of a less serious character. Thus if an ordinarily steady respectful man commits himself when drunk by the use of insubordinate language, it may be clear that he did not really intend to be insubordinate; and though the offence cannot be passed over, yet a more lenient punishment will meet the justice

(a) See K.R., 508-513. The directions in A.A. 46 do not affect the right of the soldier to elect to be tried by a district court-martial (s. 46 (8)).

(b) See K.R., 510.

(c) Where, however, a soldier under the influence of drink strikes a superior officer or is guilty of any other offence, it is the duty of the convening officer to consider carefully, according to the circumstances, whether it is necessary to charge the more serious offence.

(d) K.R. 497.

of the case, than if the same man had used the same language deliberately when sober. So, too, acts, which if done deliberately would show a wilful defiance of authority, may, if the man was drunk, be regarded as amounting only to the less offence of simple disobedience. So, too, if it should appear that a man absenting himself in circumstances which might ordinarily show an intention of not returning, was drunk, the court would be justified in treating the absence as a mere drunken frolic, and finding the man, though charged with desertion, guilty of absence without leave. So again, a man so drunk as to be incapable of attending parade, should be charged with drunkenness rather than with an offence under s. 15 (2) of the Act.

32. The remaining sections of the part of the Act relating to military offences do not call for special notice in this chapter, with the exception of the proviso to the section (40) dealing with conduct to prejudice of good order and military discipline, which provides that no charge shall be made under that section, for an offence which is a specific offence under any other provision of the Act, and is not a civil offence; although the conviction of a person so charged is not necessarily invalidated. Before, then, an offender is charged under this section, the convening officer must satisfy himself not only that the act, conduct, disorder, or neglect is to the prejudice of good order and military discipline, but also that it is not any one of the offences specifically punishable under the Act. If he fails to do so he will be responsible for contravening the Act, notwithstanding that the conviction is not invalidated. Attempts to commit offences specified in the Army Act are not, with one or two exceptions, specifically made offences, and therefore can be tried under this section. But civil offences, *e.g.*, frauds, should not be tried under this section.

Conduct to prejudice of military discipline.

33. An important distinction is made by the Act, in that certain offences are punishable more severely when committed on active service (a) than at other times. Instances of this distinction will be found in sections 6, 8, 9, and elsewhere. A sentinel, for example, found asleep or drunk on his post, while on active service, would, if the character and circumstances of the offence were sufficiently grave, be liable to suffer death, while if he were not on active service he could at the utmost be sentenced to imprisonment (b). Supposing the evidence on the trial to prove that an offence charged as having been committed on active service was committed not on active service, the offender may be found guilty of the latter offence only, and be sentenced accordingly to the less punishment (c).

Offences committed "on active service."

34. Jurisdiction is given by s. 41 to courts-martial to try ordinary civil offences, from murder and treason downwards, when committed by persons subject to military law. The limitations on the exercise of this jurisdiction and the other provisions of the section are explained in Chapter VII; which also contains for the information of officers who may have to try such offences, a short statement of the laws relating to them.

Offences punishable by ordinary law.

35. Having laid down the offences, the Act enacts (s. 44) a scale of punishment for officers and soldiers respectively. With two exceptions, each particular offence laid down in the Act has a *maximum* punishment assigned to it; and then, by s. 44, provision is made enabling a court-martial to award a less punishment. If, for example, the *maximum* punishment assigned to an offence is

Scale of punishments.

(a) For the definition of "active service," see A.A. 189 (1).

(b) A.A. 6 (1) (k).

(c) A.A. 56 (5).

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Punish-
ment of
detention.

36. The scale of punishments received an important modification in 1906, when a new punishment—"detention"—was introduced into it, to rank immediately below imprisonment. The object of the change is explained in the preamble to s. 4 of the Army (Annual) Act, 1906, which is as follows:—"For the purpose of preventing soldiers convicted of offences against discipline under the Army Act, and not discharged with ignominy, from being subjected to the stigma attaching to imprisonment, the following amendments shall be made in the Army Act." A court-martial ought not, therefore, to sentence to imprisonment a soldier convicted of a purely military offence, and if the court imposes imprisonment in contravention of this principle, the confirming officer should, except in very special circumstances, commute the sentence to a sentence of detention. If the sentence is imprisonment and discharge with ignominy, the confirming officer, when commuting to detention, must also remit the discharge with ignominy, as such a discharge cannot accompany a sentence of detention (b).

Field
punish-
ment.

37. The Army Act, as a substitute for the formerly existing power of inflicting corporal punishment, provides (s. 44, proviso (5)) that a court-martial may award for any offence committed by a soldier on active service such field punishment, other than flogging, as may be directed by rules made by a Secretary of State. The rules made in pursuance of the above enactment must be referred to for further details on this subject (c).

Articles of
War.

38. In conclusion must be noticed the power of His Majesty, under s. 69, to make Articles of War for the better government of officers and soldiers. Such Articles may be made applicable to officers and soldiers at home or abroad, and must be judicially noticed by all judges, and in all courts. The penalty of death or penal servitude cannot be imposed by an Article of War, except for an offence expressly made liable to such punishment by the Act itself; nor can an Article of War render any offence punishable under the Act liable to be punished in a manner which does not accord with the provisions of the Act. The enumeration of offences in the Act is so complete, that the necessity for the exercise of the power of making Articles of War for the purpose of creating offences would appear unlikely to arise.

(a) A.A. 16.

(b) See generally K.R. 583.

(c) The rules are printed on pp. 721 and 722.

CHAPTER IV.

ARREST: INVESTIGATION BY COMMANDING OFFICER.
SUMMARY POWER OF COMMANDING OFFICER:
PROVOST-MARSHAL: DISCIPLINE ON BOARD HIS
MAJESTY'S SHIPS.(i.) *Arrest.*

1. Whenever any person subject to military law is charged with an offence, he may be taken into military custody, which in the case of an officer means arrest, and in the case of a private soldier means open arrest or confinement. Persons subject to military law as officers under s. 175 will be put in arrest; persons subject to military law as soldiers under s. 176 will be put in open arrest, close arrest, or confinement when the circumstances of the case, as laid down in the King's Regulations, render it necessary (a). Non-commissioned officers are, as a rule, put in arrest, and not in confinement.

Military custody of person charged with offence.

2. An officer is put in arrest either directly by the officer who orders it, or more generally through the medium of a staff officer, i.e., by the adjutant or a field officer of the regiment when the arrest is ordered by the commanding officer, and by an officer of the general staff when the arrest is ordered by a superior officer, and not through the channel of the commanding officer. The order may be verbal or written, the latter as being more formal being the preferable mode, except where the offence is committed in the presence of the commanding or superior officer. On being put in arrest, an officer is deprived of his sword.

Arrest of officer.

3. The arrest may be either close or open, according to the direction of the officer who ordered it. The King's Regulations direct that an officer in close arrest shall not leave his quarters or tent except to take exercise under supervision; but an officer in open arrest may be permitted to take exercise at stated periods within certain limits, which are usually the precincts of the regimental barracks or camp; he must not, however, appear out of uniform, nor at mess, nor at any place of amusement or public resort, such, for instance, as a billiard room, nor must he wear sash, sword, belts, or spurs (b). An officer placed under arrest should always be informed in writing of the nature of the arrest, which will be governed by the circumstances of the case; and any change in the nature of the arrest should be notified in writing to him. An officer may, if the circumstances of the case require it, be placed in the charge of a guard, picket, patrol, or sentry, or, if on active service abroad, in the custody of a provost-marshal (c). An officer under arrest may be ordered or permitted to attend as witness before a court-martial, or before a civil court.

Arrest may be close or open.

4. As a rule, a commanding officer will not place an officer under arrest without investigation of the complaint or the circumstances tending to criminate him; though cases may occur in which it would be necessary to do so. It is the duty of the commanding officer to report each case of arrest without unnecessary delay to the proper superior military authority (d).

Arrest usually preceded by investigation.

(a) A.A. 45 (1), (2). K.R., 463-482A.

(b) K.R., 466, 467.

(c) K.R., 465. See also para. 39 of this chapter.

(d) K.R., 469. See for summary of the provisions of the Act and rules for preventing unnecessary detention in arrest, A.A. 46, and notes, 1 to 6.

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Arrest of senior by order of junior officer in certain circumstances.

Case of Lt.-Col. H. in 1819.

5. It is expressly laid down by s. 45 (3) of the Army Act, that a junior officer may order the arrest of a senior (even of a different corps or branch of the service), if engaged in any quarrel, fray, or disorder; and in the case of any glaring impropriety, such as drunkenness on parade, it may become the *duty* of a junior to take the same extreme measure.

6. This was clearly shown by the order on a court-martial for the trial of Brevet Lieut.-Col. H. at Plymouth, in 1819. Lieut.-Col. H. appeared at a regimental parade in a state of intoxication, and was put under arrest by Captain E., one of his junior officers. He was tried "for being drunk on duty when under arms inspecting the "guards and piquet of the Regiment of Foot," and sentenced to be cashiered; the court observing that the occurrence of a commanding officer being put under arrest while in the actual command of a regimental parade was unprecedented in their experience; and that the circumstances detailed in evidence were not of that imperious urgency as to have called for the immediate adoption of so very strong a measure. The Prince Regent, however, in confirming the finding and sentence, took occasion to signify that he could not allow the observations of the court to go forth to the army without explaining "that the court are in error when they "suppose that circumstances may not occur even upon a parade to "justify a junior officer in taking upon himself the strong responsibility of placing his commander in arrest; such a measure must "rest alone upon the responsibility of the officer who adopts it, "and there are cases wherein the discipline and welfare of the "service require that it should be assumed. In the present "instance the sentence of the court appears to afford a full justification of Captain E.'s conduct in the placing of Lieut.-Col. H. in "arrest, though it would have been more regular if that officer "had continued to rest upon his own responsibility, without "calling a meeting of his brother officers to support it by their "opinions."

Officer under arrest has no right to demand court-martial

7. The King's Regulations point out that an officer put under arrest has no right to demand a court-martial, nor, after he has been released by proper authority, to persist in considering himself under arrest, or to refuse to return to his duty. If he conceives himself wronged by arrest, his remedy is a complaint in manner prescribed by the Army Act (a).

Release of officer.

8. The release of an officer under arrest may be ordered by the officer who imposed the arrest, or the superior to whom it may have been reported; but, as a rule, the release is not to be ordered without the sanction of the highest authority to whom the case may have been referred (b).

No privilege of Parliament from arrest.

9. Peers and Members of the House of Commons are not privileged from arrest; but the fact and cause of the arrest should always be communicated to the Lord Chancellor, or to the Speaker, as the case may be.

Non-commissioned officers.

10. The rules which govern the close and open arrest of officers apply also to non-commissioned officers. A non-commissioned officer charged with a serious offence will, as a rule, be placed under arrest forthwith; but in case of doubt as to the commission of the offence, the arrest may be delayed; and if the offence is not serious, it may be disposed of without previous arrest (c).

(a) K.R., 470, A.A. 42; see also K.R. 128 and 439.

(b) K.R., 468.

(c) See para. 3 above. K.R., 471.

11. Private soldiers taken into military custody (not under sentence) are confined in charge of a guard, piquet, patrol, or sentry, or of a provost-marshal; or in the case of minor offences, such as absence from tattoo and other roll-calls, over-staying a pass, and other slight irregularities in quarters, which are to be disposed of by the company, &c., commander, or commanding officer, without the offender being previously lodged in the guard-room, are placed in open arrest (a). In permanent barracks soldiers confined under charge of a guard will usually be detained in the guard detention room (b). They are never to be kept in irons, except when it is necessary for safe custody, or to prevent violence. A soldier against whom a charge for a minor offence is pending, is not treated as in arrest, and attends all parades, though he will not be detailed for duty. Where troops are in billets or on the line of march, or accommodation for the confinement of soldiers is otherwise not available, a soldier in military custody (not under sentence), may be committed by order of his commanding officer, for a period not exceeding seven days, to any civil prison or lock-up (c). An offender, while in close arrest, is not required to perform any military duty further than may be necessary to relieve him from the care of any cash, stores, &c., for which he is responsible; nor is he permitted to bear arms, except by order of his commanding officer in case of emergency or on the line of march; and if by error he is ordered to perform any duty, his offence is not thereby condoned (d). On board ship he may be employed on fatigue duties, although he should not be placed on guard (e).

A man may be confined while awaiting trial by court-martial or the promulgation of the finding and sentence of the court-martial which tried him, and may be so confined in a branch detention barrack (f). When a soldier elects to be tried by district court-martial under s. 46 (8) of the Army Act, his commanding officer may, if he thinks the circumstances of the case warrant it, release the accused pending trial (g). A man when confined can only be released by a competent authority—e.g., if confined in a regimental guard-room he can only be released by the authority of the commanding officer of the regiment, and if in a garrison guard-room by the authority of the officer commanding the garrison.

12. The offence of breaking or attempting to break arrest or confinement renders an officer liable to be cashiered, and a soldier liable to imprisonment (h). An offender confined to quarters, and quitting them for any purpose whatever, however short the time of his absence, is strictly speaking guilty of breaking his arrest. The gravity of the offence will depend mainly on whether the circumstances do or do not disclose deliberation, and intentional defiance of authority.

13. The offences of releasing without proper authority a person in custody, and of suffering a person in custody to escape, are punishable in some cases more severely; an offender who acts wilfully

(a) K.R. 473.

(b) K.R. 473-476. As to soldiers in a state of drunkenness, see *ib.* 478.

(c) K.R. 476. For form of order, see Form Q in App. III to R.P. As to the duties of N.C.O.'s in relation to the confinement of private soldiers, see K.R. 477.

(d) K.R. 482.

(e) K.R. 1613.

(f) K.R. 648, and see Form R in App. III to R.P.

(g) K.R. 490 A.

(h) A.A. 22. As to escape, see note 2 to that section.

Ch. IV. being liable to penal servitude (a). It will be remembered that here, as elsewhere, the punishments specified are maximum punishments.

Receiving
accused
persons
into cus-
tody.

14. An officer or non-commissioned officer commanding a guard, or a provost-marshal, cannot refuse to receive or keep any person committed to his custody by an officer or non-commissioned officer; but the committing officer or non-commissioned officer must, at the time of committal, or within 24 hours after, deliver to the officer or other person into whose custody the offender is committed a written account, (generally termed the "charge"), signed by himself, of the offence with which the person committed is charged (b).

Account of
offence.

15. The charge should be a concise summary of the evidence on which the accused was committed into custody, and should contain, without any unnecessary detail, all the material points of the offence. If the charge states that the accused was drunk, or absented himself, and a witness subsequently adds before an investigating officer that the accused struck a non-commissioned officer, or used threatening language, the presumption is that the conduct of the accused had not at the time been thought sufficiently serious to amount to an offence, and to be entered in the charge. As a rule, then, the investigating officer would treat the fresh evidence merely as showing the nature and degree of the offence originally deposed to; but in some cases he may consider it advisable to make this new evidence the substance of a specific charge.

Omission to
deliver
charge.

16. The omission of the committing officer to deliver the charge will not justify the commander of the guard or provost-marshal in refusing to receive into custody, much less in releasing, the accused. His proper course, in the event of such omission, is to take steps for procuring the charge, or to report to the officer to whom his guard report is furnished that no charge has been delivered. If the charge or evidence sufficient to justify the retention in custody of the accused is not forthcoming within 48 hours after committal, the latter officer will order the release of the accused (c).

Duty of
commander
of guard to
report name
and offence
of accused.

17. It is the duty of the commander of the guard (immediately on the relief of the guard) to report in writing to the officer to whom he is ordered to report, the name and offence of the accused, and the name and rank of the committing officer; and he should include the charge in his report or, if it has not been delivered, should state the fact. If he fails to make this report within 24 hours after the accused was committed, or where he is relieved from his guard within that period, then immediately on being so relieved, he himself commits an offence. The report will, as a rule, be made to his commanding officer (d).

(ii) *Investigation by Commanding Officer.*

Investiga-
tion by
command-
ing officer.

18. The object of the above report is to enable the commanding officer of the accused, without delay, to institute an investigation of the case. There is some difference in the procedure in the case of an officer and in that of a soldier.

In case of
officer.

19. The case of an officer may be referred to a court of inquiry, and need not, unless the officer requires it, be formally investigated before his commanding officer (e); but the commanding

(a) A.A. 20.

(b) A.A. 45 (4).

(c) K.R. 463.

(d) A.A. 21 (3), and K.R., 463, 464. See for summary of the provisions of the Act, and rules for preventing unnecessary prolongation of confinement, A.A. 45 and note,

(e) R.P. 8 and note.

officer, in the case of an officer as well as of a soldier, is made by s. 46 of the Army Act responsible for dismissing the charge, if it ought not to be proceeded with; and, if it ought to be proceeded with, for taking the proper steps to bring the offender before a court-martial. Ch. IV.

20. A case of a non-commissioned officer or private soldier will, in the first instance, be investigated by the company, &c., commander. Where the accused is a private, this officer, if he decides that the case is a minor offence or a case of drunkenness, or of absence without leave, with which he can deal under the powers possessed by, or delegated to, him under the King's Regulations (a), will either dispose of the case himself or leave it to his commanding officer to deal with. The case of a non-commissioned officer must always be left to be dealt with by the commanding officer, except that the company, &c., commander has power to admonish or reprimand (but not severely reprimand) a non-commissioned officer not above the rank of corporal (b). A case left to be dealt with by a commanding officer must be investigated by the commanding officer himself. He can dismiss the charge, or remand the case for trial by court-martial; can apply to superior military authority; or, in the case of a private soldier, can award punishment summarily, subject to the right of the soldier, in any case where the award or finding involves forfeiture of pay, and in any other case where the commanding officer proposes to deal with the offence otherwise than by awarding a minor punishment, to elect to be tried by a district court-martial, and subject to the limitations imposed on the discretion of commanding officers by the King's Regulations (c). A warrant officer, or a person subject to military law as a soldier, but not belonging to His Majesty's forces, cannot be summarily punished, and a non-commissioned officer, though not legally exempt, is not allowed by the King's Regulations to be summarily punished (d). In case of soldier.

21. This duty of investigation by the commanding officer requires deliberation, and the exercise of temper and judgment, in the interest alike of discipline and of justice to the accused. The investigation usually takes place in the morning, and must be conducted in the presence of the accused (e); but, in the case of drunkenness, an offender should never be brought up till he is perfectly sober (f). Duty of officer conducting investigation.

22. After the nature of the offence charged has been made known to the accused, the witnesses present on the spot who depose to the facts for which he has been confined are examined. In every case where the commanding officer has power to deal with the case summarily, the accused has a right to demand that the witnesses against him be sworn; and he will also have full liberty of cross-examination (g). Examination of witnesses.

23. The commanding officer, after hearing what is urged against the accused, will, if he is of opinion that no military offence at all, or no offence requiring notice, has been made out, at once dismiss the charge (h). Otherwise, he must ask the accused what he has Decision of commanding officer.

(a) K.R., 484, 499 and 501.

(b) K.R., 484 and 499.

(c) A.A. 46, R.P. 4, 7. K.R., 483-491; below para. 23.

(d) A.A. 182 (1); 184 (2). K.R., 499; and as to summary punishments, see below, para. 31, &c.

(e) R.P. 3 (A).

(f) See K.R., 478, which suggests the lapse of 24 hours before he is brought up.

(g) A.A. 48 (8); R.P. 3 (A), (B) and note; q.v. also as to the evidence of the accused himself and of his wife.

(h) R.P. 4 (A).

Ch. IV. to say in his defence, and whether he has any witnesses to call, and will give him full opportunity both of making a statement and of supporting it by evidence, including the evidence of the accused himself and that of his wife (a). The commanding officer will then consider whether to dismiss the case or to deal summarily with the case himself, or to adjourn the case for the purpose of having the evidence reduced to writing, with a view to having the case tried by court-martial (b). First and less serious offences of the class which he has authority under the King's Regulations to dispose of summarily, without reference to superior authority, should, as a rule, be so dealt with, subject to the soldier's right to elect before the award to be tried by a district court-martial. If the offence does not belong to the above class, and the commanding officer desires to dispose of it summarily, he must refer to superior authority by letter stating briefly the circumstances, and accompanied by the conduct sheets of the accused. A charge for any offence, of whatever class, may, if the commanding officer thinks fit, be referred to superior authority, with an application for a district court-martial (c).

Caution as to expressing opinion.

24. During the investigation, the officer conducting it must be careful not to let fall, before he disposes of the case, any expression of opinion as to the guilt of the accused, or one which might prejudice him at a subsequent trial (d). It frequently happens that officers who have been present at the investigation are detailed as members of the court convened in consequence of it; therefore, nothing should be said or done which might, though unconsciously, bias their judgment beforehand.

Right of soldier to claim court-martial.

25. If the commanding officer proposes to deal with the case summarily, otherwise than by awarding a minor punishment, he must ask the soldier whether he desires to be dealt with summarily, or to be tried by a district court-martial; and the soldier may, if he chooses, thereupon elect to be tried by a district court-martial. Save as aforesaid, a soldier has no right to claim a court-martial, except that, where the commanding officer has omitted to put the proper question to him, the soldier has a subsequent opportunity of making the claim (e).

Adjournment for taking a summary of evidence.

26. Where a commanding officer adjourns the case for the purpose of having the evidence reduced to writing, the evidence given by any witnesses before him must be taken down in writing in the presence of the accused (f); the accused must be allowed to cross-examine within reasonable limits, especially if there is any variance between the evidence as taken down and that given on the prior investigation. Any statement made by the accused, which is material to his defence, will also be added in writing (g), and the accused must be warned that this will be done.

Mode of taking summary.

27. The evidence and statement, if any (called the summary of evidence), must be taken down in the presence of the commanding officer himself, or of some officer deputed by him (h). Great care

(a) R.P. 3 (A) and note

(b) R.P. 4 (B).

(c) R.P. 4; K.R. 487-489.

(d) K.R., 483.

(e) A.A. 46 (8); R.P. 7.

(f) The accused and his wife, even if they have given evidence before the commanding officer, cannot be compelled to repeat their evidence unless the accused makes an application to that effect. See note 7 to R.P. 4.

(g) R.P. 4 (E).

(h) R.P. 4 (C).

is necessary in the performance of this duty; the exact words used by the witness or accused should as nearly as possible be taken down, and the summary should be free from any expression of opinion or conjectures, and from matter not bearing on the case. The difference not infrequently observable between the statements recorded in the summary of evidence and the evidence given before a court-martial may often be traced rather to the hasty or careless preparation of the summary, than to any prevarication or desire to mislead on the part of the witnesses.

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28. When the summary of evidence has been taken, the commanding officer must consider it and determine whether or not to remand the accused for trial by court-martial. It may be that on reading the evidence the commanding officer will come to the conclusion that the case is one which ought to be disposed of summarily. In such a case, unless the accused has himself elected to be tried by district court-martial, the commanding officer will either rehear the case and dispose of it summarily, or, if he is not competent to do so without leave from superior military authority, refer the case to the proper authority. In any other case the commanding officer will remand the accused for trial by court-martial (a). If a court-martial is ordered or applied for, the accused can be kept in arrest or confinement until the charge is disposed of. It is the duty of the commanding officer on reading the summary of evidence to note whether or not the evidence taken down in the summary corresponds with the evidence given at the inquiry before him.

Remand of accused for trial by court-martial.

29. The summary of evidence, like the depositions before justices, may be used for certain limited purposes at the trial, and also for the purpose of giving to the accused notice of the charge he will have to meet, and to the convening officer and president of the court notice of the case to be tried. Either the summary itself or a true copy must be laid before the court-martial before whom the accused is tried; and a copy must be given gratis to the accused at the time he is warned for trial (b).

Use of summary of evidence.

30. An application for a court-martial should usually be disposed of at once; but if the convening officer detects matter showing culpable neglect or improper conduct on the part of the superiors of the accused, he may delay assembling a court for the purpose of making inquiry. In most instances, the offences referred to him by the commanding officer in pursuance of the King's Regulations (c) may well be disposed of by an inferior court, unless circumstances render it necessary in the interests of discipline to deal with them more severely. The officer who convenes a court-martial is responsible for the correctness of the charges (d), and will, if necessary, revise them after considering the evidence as shown in the summary. The charge sheet containing the charges as approved by the officer convening the court-martial will be sent to the president, as well as the summary of evidence, or a true copy thereof, and will be laid by him before the court-martial (e). The prosecutor should have a copy of the charge sheet and summary, or at least should have access to them (f).

Convening court.

(a) R.P. 5 (A).

(b) R.P. 5 (C) and 14 (B). As to use of summary, see note 2 to R.P. 8.

(c) K.R., 487.

(d) R.P. 17 (A).

(e) R.P. 17 (E).

(f) As to giving notice of the charges to the accused, see below Ch. V, para. 32.

Ch. IV.

(iii.) *Summary power of Commanding Officer.*

Power of commanding officer to deal with non-commissioned officer or soldier.

81. The power of the commanding officer to punish summarily a soldier is twofold : first, the power under the Army Act to award detention, deduction from ordinary pay, and in the case of drunkenness a fine not exceeding 10s., and, in case of offences committed on active service, field punishment, and forfeiture of pay, for not more than 28 days (a); and, secondly, the power under the King's Regulations to award the minor punishments of confinement to barracks, or extra guards or piquets, subject and according to the provisions of para. 493, to which reference must be made. The detention must in no case exceed twenty-eight days. In the case of absence without leave exceeding seven days, the term of detention awarded is not to exceed the number of days of absence (b). Under the terms of the Army Act (s. 46 (2)) a non-commissioned officer cannot be awarded field punishment or forfeiture of pay by his commanding officer, and under the King's Regulations a non-commissioned officer is not to be subjected to summary or minor punishments by his commanding officer. He may be admonished, reprimanded or ordered to revert from an acting or lance rank to his permanent grade (c), or may be removed from an appointment to his permanent grade, but this power of removal, if the non-commissioned officer's permanent rank is higher than that of corporal, is not to be exercised without reference to superior authority (d).

Drunkenness.

32. Drunkenness and absence without leave are the two offences which require to be most frequently dealt with by the commanding officer ; indeed, the case of drunkenness of a soldier, apart from exceptional cases, as described in Chapter III, *must* be so dealt with (e). This obligation does not apply to a non-commissioned officer charged with drunkenness (f).

Absence without leave.

33. In the case of absence without leave, the commanding officer in determining his award is to have regard to the number of days of absence, and though he may give 168 hours' detention for absence during any period *not exceeding* seven days, yet it must always be remembered that for absence *exceeding* seven days the term awarded cannot exceed the number of days of absence. For example, suppose Private A.B. has been absent without leave, and the commanding officer thinks it expedient to award detention, then the detention may be, if the man has been absent three days, for any number of hours up to 168 ; if he has been absent eight days, for any number of hours up to 168, or for eight days ; if he has been absent twenty-six days, for any number of hours up to 168, or any number of days from eight to twenty-six (g).

Forfeiture of pay.

34. Under s. 138 of the Army Act and the Royal (Pay) Warrant, pay is forfeited, as a matter of course, for every day of absence either on desertion, or without leave ; also for every day of imprisonment, detention, or field punishment, under sentence, or in custody under any charge resulting in conviction by a court-martial or civil court, or under a charge of absence without leave, resulting

(a) A.A. 46, 138 ; K.R. 483.

(b) A.A. 46 (2) (a), (5) ; R.P. 6, and note.

(c) K.R., 499.

(d) K.R., 302.

(e) See Ch. III, para. 27.

(f) A.A. 183 (1).

(g) In dealing summarily with cases of absence, the commanding officer must take into consideration all the circumstances. K.R., 502. As to notifying in Regimental Orders the names of men absent without leave, see K.R. 503.

in an award of detention, or field punishment, by his commanding officer; also for every day in hospital on account of sickness, certified to have been caused by an offence committed by him. In the case, therefore, of absence without leave, as the pay is forfeited as a matter of course, the officer dealing with the case should make no award, but only inform the soldier of the number of days' pay forfeited (a); such a forfeiture can only be remitted under any provisions to that effect which may be contained in the Pay Warrant, or (so far as the Pay Warrant does not provide to the contrary) by the Army Council (b).

The commanding officer may, where a soldier is not tried by court-martial, order stoppage of his pay to make compensation for any expenses caused by him, or for any loss of or damage or destruction done by him to any arms, equipment, regimental necessaries, and so forth, or by his injuring any buildings or property (c); and may likewise order the stoppage of the amount of any fine awarded by himself (d).

35. There is no appeal from the award of the commanding officer, but, as has been already mentioned, the soldier may, in certain cases, instead of submitting to the jurisdiction of his commanding officer, elect to be tried by a district court-martial (e).

Right of soldier to demand district court-martial. No trial after punishment by commanding officer.

36. When once an offender has been punished by his commanding officer he cannot be tried by a court-martial for the same offence; and similarly he cannot be punished by his commanding officer or subjected by him to any stoppage of pay for any offence of which he has been acquitted or convicted by a court-martial or by a competent civil court (f). When a commanding officer has once awarded punishment for an offence, he cannot afterwards increase it (g). It is considered that a commanding officer's award is complete when the man has left his presence.

37. A commanding officer will (subject to the limitations of K.R. 501) delegate to company, &c., commanders the power of awarding minor punishments not exceeding seven days' confinement to barracks for any offences which he himself may deal with (h).

Delegation of power by commanding officer.

38. The commanding officer of a detachment if of field rank has, unless restricted by superior authority, the same power of awarding summary punishment as the commanding officer of a corps (i).

Commanding officer of detachment.

(iv.) *Provost-Marshal.*

39. In case of offences committed abroad, whether on active service or not, arrests will often be made by the provost-marshal or his assistants, who may be appointed by a general officer commanding a body of forces abroad. A provost-marshal cannot, as was formerly the case, inflict any punishment of his own

Provost-marshal.

(a) K.R., 495.

(b) A.A. 138, 139; P.W. 977. Absence as a prisoner of war no longer involves forfeiture of pay, unless a court of inquiry (K.R. 875) subsequently find that the soldier was taken prisoner through his own fault or misconduct; and even so, the forfeiture only attaches to any balance of pay unissued, P.W. 985.

(c) A.A. 138 (4).

(d) A.A. 138 (7).

(e) A.A. 43 (8); above, para. 20.

(f) A.A. 46 (7).

(g) R.P. 6 (B). As to the power of the Army Council or officer not below the rank of brigadier-general to cancel an award, or reduce the punishment, see K.R. 507.

(h) K.R., 484, 501.

(i) K.R., 466, 467, and see 468.

Ch. IV. authority (a). He can only arrest and detain for trial persons subject to military law committing offences, and carry into execution punishments to be inflicted in pursuance of a court-martial. A provost-marshal and his assistants have also as respects a soldier in his or their custody undergoing field punishment, the same powers as the governor of a military prison (b).—

Section 74 of the Army Act permits of the appointment of a provost-marshal and assistant provost-marshals by general officers commanding bodies of forces serving abroad. The provost-marshal will always be a commissioned officer: his assistants may be either officers or non-commissioned officers (c). At home, a provost-marshal, (who is also commandant of the Corps of Military Police) and two assistant provost-marshals are appointed by the King. During manœuvres officers are detailed to act as assistant provost-marshals with Divisions in order that they may acquire a knowledge of their duties. On mobilization, a provost-marshal and such assistant provost-marshals as may be necessary, would be appointed.

(v.) *Discipline on Board H.M.'s Ships.*

Discipline
on board
H.M.'s
ships.

40. The discipline of troops embarked as passengers on board any of His Majesty's ships is regulated by Orders in Council made under the Naval Discipline Act (d).

(a) The provost-marshal was, until 1829, appointed by the general, and exercised his powers without any statutory authority, and the appointment could only be justified legally as being made under the Sovereign's prerogative to govern the army in time of war in places out of his dominions. There must have been considerable doubt as to the existence of the power, and consequently as to the legality of the provost-marshal's acts, and a correspondence took place between the Duke of Wellington and the Government on the subject during the Peninsular War. (See Clode, *Mil. Forces*, ii. p. 662.) In 1829 the Article of War respecting the provost-marshal was inserted, and gave legal recognition and—if it was within the powers of the Articles—legal sanction to the appointment and powers of the provost-marshal. (See Clode, *Military and Martial Law*, pp. 181-3.) The above powers were curtailed in 1879 by the Act of that year. For appointment and duties, see *K.R.*, 599.

(b) *A.A.* 74. As to garrison and regimental provost-serjeants, see *K.R.* 661-665.

(c) See *K.R.* 549.

(d) See *A.A.* 786 and the Orders in Council printed below, pp. 728-733.

CHAPTER V.

COURTS-MARTIAL.

(i.) *Constitution and Jurisdiction.*

1. The descriptions of court-martial before which a person can be brought who is charged with an offence too serious to be disposed of summarily by the commanding officer, are three (a):—

Three descriptions of court-martial.

- (1.) The regimental court-martial;
- (2.) The district court-martial; and
- (3.) The general court-martial.

None of these tribunals has power to try any person unless he is subject to military law as provided by the Army Act (b). But each of them has under the Army Act complete jurisdiction to try any military offence whatever committed by a person so subject to military law; the difference between their powers consisting, in the extent of punishment which each tribunal can award, and in the incapacity of the inferior tribunals to try officers and persons in the position of officers.

2. Thus, a regimental court-martial cannot award a heavier punishment than forty-two days' detention, and cannot sentence a soldier to be discharged with ignominy; nor can it try an officer or a warrant officer, or a person subject to military law but not belonging to His Majesty's forces (c).

Powers of regimental court.

3. A district court-martial cannot award any punishment higher than two years' imprisonment; and cannot sentence a warrant officer to any punishment except forfeitures, &c., and either in addition to or instead of forfeitures, &c., dismissal, or such reduction as is mentioned in s. 182 of the Army Act, and cannot try an officer (d).

Of district court.

4. A general court-martial alone can award the punishments of penal servitude and death, and can try an officer.

Of general court.

5. A person who since the time at which an offence is alleged to have been committed by him has ceased to be subject to military law, may nevertheless be tried and punished by a court-martial for his offence; but except in the case of mutiny, desertion, or fraudulent enlistment, he can only be tried within three months after he ceased to be subject to military law (e); reservists and members of the territorial force can, however, in the case of certain offences be tried within two months after their apprehension (f). A court-martial has no jurisdiction to try a person for any offence of which he has been already acquitted or convicted by a court-martial or by a competent civil court (g); this does not apply where there has been no regular trial resulting in an acquittal or conviction or in the case of a

Jurisdiction in respect of certain offenders.

(a) As to field general court-martial, see below, paras. 24-26.

(b) A.A. 175, 176; see also *Introductory Observations* to A.A. Part V.

(c) A.A. 47 (5); 182 (1); 184 (1). A N.C.O. above the rank of corporal is not ordinarily to be tried by regimental court-martial. K.R., 438.

(d) A.A. 48 (8).

(e) A.A. 158 (1).

(f) *Reserve Forces Act, 1882, s. 26; T.R.F. Act, 1907, s. 26 (2).* See T.F. Regulation 248-268.

(g) A.A. 157, 162 (6), and note.

Ch. V. conviction by a court-martial which has not been duly confirmed (a); but although as a general principle non-confirmation of a conviction by a court-martial enables a man to be tried again, it is obvious that this course should only be exceptionally adopted, as, *e.g.*, if the plea of a soldier charged with desertion is, that he was guilty, but intended to return, and this plea has been recorded as guilty, although amounting to a plea of not guilty. The cases where such a course is more particularly applicable are mentioned in the Act (see ss. 53, 54 (6), 157), and the Rules (see 56 (B), 57, 66 (B), 100).

Further observations on jurisdiction.

6. An offence, other than mutiny, desertion, or fraudulent enlistment, cannot be tried by court-martial if three years have elapsed since the date of its commission (b), but a partial exception from this is made, as stated in para. 5, for reservists and members of the territorial force. An offence, wherever committed, may be tried and punished at any place (either within or without His Majesty's dominions) which is within the jurisdiction of an officer authorised to convene general courts-martial, and in which the alleged offender may for the time being be, and the trial will take place as if the offender were under the command of such officer (c). Offences committed on board ship can be tried on board before reaching the port of disembarkation, as if committed on land at the place where the offender embarked, but no military court-martial is ever held on board one of His Majesty's ships, except a regimental court-martial for trying a non-commissioned officer (d).

Composition of courts.

7. Closely connected with the difference between courts-martial as regards their power of punishment is the difference as regards their composition, in that the inferior courts-martial consist of fewer members, and may be composed of officers of lower rank.

Legal minimum.

8. Thus the legal minimum number of members on a regimental court-martial, and on a district court-martial, is three; while on a general court-martial in the United Kingdom, India, Malta, and Gibraltar it is nine, and elsewhere five (e).

Composition of regimental court.

9. The members of a regimental court-martial are not required to be (f), but will as a rule all be, officers of the unit to which the accused belongs, or attached to it, except where detachments of several corps are serving together—on the march, for example, or on board ship. Every member of a regimental court must have held a commission for a year (g).

Of district court.

10. A district court-martial must consist, so far as seems practicable, of officers of different corps, and can only be composed exclusively of officers of the same regiment of cavalry or battalion of infantry, if other officers are not available (h). Every member of a district court must have held a commission for two years (i).

(a) R.P. 66 (B); A.A. 53 (4), 54 (6).

(b) A.A. 161. When a soldier has served in a corps of the regular forces for three years in an exemplary manner, he cannot be tried for fraudulent enlistment or for desertion (other than desertion on active service) committed before the commencement of such three years (s. 161). If a soldier has served for three years without an entry in the regimental conduct sheet, he is to be considered as having earned exemption under the above enactment; K.R., 489.

(c) A.A. 159, 160.

(d) A.A. 183; Naval Discipline Act, s. 88. As to discipline of troops on board H.M.'s ships, see Ch. IV., para. 40.

(e) See A.A. 47, 48, R.P. 18, and note; and as to the number to be detailed in ordinary cases, and waiting members, K.R., 576. For doubtful or complicated cases, a district court should usually consist of five members, *ib.* Where the minimum number is detailed for a court-martial not more than one member should be a subaltern, *ib.*

(f) A.A. 50 (1).

(g) A.A. 47 (2) (see note), R.P. 119 (O).

(h) R.P. 20 (A), and note.

(i) A.A. 48 (4), R.P. 19 (O).

11. A general court-martial must also consist, so far as seems practicable, of officers of different corps, and can only be composed exclusively of officers of the same regiment or battalion if other officers are not available (a). Every member of a general court-martial must have held a commission for three years, and if the court is to try a field officer, must not be under the rank of captain. The Army Act further provides that not less than five members must be of a rank not below that of captain; and Rule 21 requires the members of a court-martial for the trial of an officer to be of equal, if not superior, rank to that officer, unless officers of such rank are not available. For the trial of a commanding officer of a unit, as many members as possible must hold, or have held commands equivalent to that held by the accused (b).

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Of general court.

12. In the case of the trial of an offender belonging to the auxiliary forces, one member of the court is, if practicable, to belong to those forces, and to the same branch as that to which the accused belongs (c).

Trial of members of auxiliary forces.

13. In all cases the members of a court must be themselves subject to military law, and must not be personally interested in any manner in the case to be tried by them. Nor can an officer sit on a court-martial if he is the convening officer, or the prosecutor, or a witness for the prosecution, or if he investigated the charges (this will include the company, &c., commander who made the preliminary investigation and the officer who takes the summary of evidence), or was member of a court of inquiry respecting the matters on which the charges are founded, or if he is the commanding officer of the accused, or of his corps or battalion (d).

General provisions.

14. The president of a court-martial must always be appointed by the convening officer (e). The other officers may be mentioned by name, or their number and rank and the unit to which they belong may alone be named (f). The president of a court-martial should be not below the rank, in the case of a regimental court, of captain; and in the case of a district or general court, of a field officer; but may in exceptional circumstances be of a lower rank (g). In the case of a general court-martial, if a general officer or colonel or lieutenant-colonel is available, an officer of inferior rank is not to be appointed (h). Honorary rank does not entitle an officer to the presidency of a court-martial (i), but he is legally qualified if duly appointed. In practice a combatant officer is always appointed, except in the case of regimental courts-martial in the Royal Army Medical Corps, in which case an officer of that corps is appointed.

President and members.

15. The object of the regimental court-martial is to try offences which, though not of a very serious nature, appear, from the character of the offender or otherwise, to require severer punishment than the commanding officer can award; or which, for some special reason, he may deem it inexpedient to deal with himself. As, however, commanding officers can now award 28 days' detention, most of the offences which formerly would have been sent before

Remarks as to trial of offences by different courts.

(a) R.P. 20 (A), and note.

(b) R.P. 19 (C), 20 (A), and 21; A.A. 48 (3); K.R., 578 (4).

(c) R.P. 20 (B). See Ch. XI, para. 21 and note 2 to R.P. 20.

(d) A.A. 50, R.P. 19 (B). See also notes to that section and that rule as to investigating officer and personal interest. A member of a court cannot act as confirming officer for that court, A.A. 54 (4).

(e) A.A. 47 (3); K.R. 577.

(f) In the case of the R.H.A. and R.F.A. the unit means a brigade (K.R. 577).

(g) On trial of a warrant officer the president must not be under the rank of a captain; A.A. 183 (4).

(h) A.A. 47 (4), and 48 (9); K.R., 578.

(i) K.R., 230.

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a regimental court will be dealt with summarily. The powers of district courts-martial are sufficient to deal with all ordinary offences committed by non-commissioned officers and soldiers; and the King's Regulations direct that the higher tribunal of a general court-martial is only to be resorted to in cases of very aggravated offences (a).

Convening officer.

16. The descriptions of courts-martial further differ as regards the officers who can convene them.

Of regimental court.

17. A regimental court-martial can be convened by a commanding officer (as defined by Rule 129) if not below the rank of captain; also by an officer not below the rank of captain when in command of two or more corps, or portions of two or more corps, and on board a ship by a commanding officer of any rank. It may thus be convened, not merely by the commanding officer of a regiment or detachment, but by an officer *de facto* commanding detachments of several regiments, however temporary his command may be, if he has, by the custom of the service, authority to tell off the offenders belonging to those detachments. A regimental court-martial can also be convened by an officer who is authorised to convene a general or district court-martial; but he should order the commanding officer (above described) to convene it, unless that officer is unable to form an adequate court from the officers under his command (b).

Of district court.

18. A district court-martial can be convened by an officer authorised to convene a general court-martial, or by an officer who has received from such officer a warrant authorising him to convene district courts-martial (c).

Of general court.

19. A general court-martial can be convened by direct warrant from His Majesty, or by an officer authorised by His Majesty to convene such courts, or by an officer holding a warrant to convene such courts from some officer authorised to delegate the power of convening them (d).

Warrants for convening in U.K.

20. At home, warrants giving officers power to convene general courts-martial are usually issued by the King to the general officers commanding in chief a command, to the general officer commanding the London district, and to the general officers commanding in Guernsey and Jersey.

In India and elsewhere out of U.K.

21. In India a warrant giving power to convene and to confirm the findings and sentences of general courts-martial is usually issued to the Commander-in-Chief in India, and elsewhere out of the United Kingdom to the general officer commanding, either in the colonies or on active service. Governors of colonies have been granted such warrants (e).

Contents of warrants.

22. Any such warrant, and also any warrant of delegation given by the officer so authorised, may contain any reservations or special provisions, and may be addressed to an officer by name, or by the designation of his office; and may give authority to a person performing the duties of an office named, or to the successors in command of an officer; and may be wholly or partly revoked by a fresh warrant (f).

Powers under warrant for convening general courts-martial.

23. Every general officer authorised, whether immediately by warrant from the King or mediately by delegation, to convene a

(a) K.R., 552.

(b) A.A. 47 (1); K.R., 559.

(c) A.A. 48 (2), 123.

(d) A.A. 48 (1), 122.

(e) A.A. 122, notes 3-5.

(f) A.A. 122 (3), (4), 123 (3). For forms of warrants, see pp. 722-726; and as to the ordinary practice in issuing warrants, see below, paras. 94, 96.

general court-martial has by virtue of the Act power to convene either a district or regimental court-martial, and also to empower another officer to convene district courts-martial, and the latter officer, by virtue of this power, will be able to convene a regimental court-martial. Such general officer should, however, as above mentioned, only convene a regimental court himself, where circumstances render that course desirable (a).

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24. The foregoing remarks have left out of notice a court-martial of an exceptional kind, termed a field general court-martial. This court has the same power as a general court-martial, including the power of trying an officer, but is convened in an exceptional way (no warrant being required), and is subject to exceptional rules under which the procedure is of a more summary character than that of an ordinary court-martial (b).

Field general court-martial.

25. A field general court-martial can only be convened on active service or abroad for the trial of offences which it is not practicable, with due regard to the public service, to try by an ordinary general court-martial. If troops are not on active service, the power of convening it is further limited to cases of offences committed by persons under the command of the convening officer and of offences against the person or property of some inhabitant of, or resident in, the country (c).

Object of field general court-martial.

26. A field general court-martial must consist of not less than three officers, unless the convening officer is of opinion that three are not available, in which case it may consist of two; but in the latter case it cannot award any sentence exceeding two years' imprisonment or three months' field punishment. A sentence of death requires the concurrence of all the members (d).

Constitution and powers.

(ii.) Procedure.

27. When a commanding officer remands an accused person for trial by court-martial he must immediately take steps for the assembly of the court, and, unless for some special reason, must do so within 36 hours. If he decides on a regimental court, he will issue his order for convening it; in any other case he will send to superior authority an application for a district or general court-martial, accompanied by the summary of evidence, the charges on which he proposes the accused person should be tried, and other documents, and in his letter of application he will state his reasons for desiring the particular description of court for which he applies (e). A reference to superior authority must similarly be made without delay. In deciding on the line of action he will take, the commanding officer will be governed by the directions given in the King's Regulations (f).

Application for court-martial by commanding officer.

28. An officer receiving an application to convene a district or general court-martial must consider the nature of the case, the statutory provisions, and the regulations applicable to it, and subject thereto, must use his discretion as to the mode of disposing of the application. He must satisfy himself that the charge is for an offence under the Army Act, and properly framed in accordance

Duty of convening officer in considering application for court-martial.

(a) See above para. 17, and K.R., 559, which applies also if the offender belongs to a special corps or department.

(b) See A.A. 49, and notes; and as to the procedure of field general court-martial, R.P. 105-123.

(c) As to convening officer, see A.A. 49 and R.P. 105.

(d) A.A. 49 (1) (2).

(e) See also Memoranda for Guidance of Courts-Martial, &c., p. 702 *et seq.*, and Form of Application for a Court-Martial, p. 727.

(f) R.P. 4 (B) and 5 (A); K.R., 487-492.

Ch. V. with the Rules of Procedure and King's Regulations, and that the evidence justifies the trial of the accused (a). If he thinks it does not, he should order the accused to be released; if he doubts, he can order the release or refer the case to superior authority. If he thinks it should be disposed of summarily or by regimental court-martial, he should give directions to that effect. If he thinks it should be tried by a district or general court-martial, he will either convene such a court, or apply for such a court to be convened.

Power to refer to superior authority.

29. He is at liberty to refer to superior authority in any case of difficulty, and he will be bound to refer, if the case is one directed by order or regulation to be referred to an officer having power to convene a particular description of court. When a soldier is to be arraigned on a serious charge, charges for any minor offence may be dropped if the convening officer thinks proper (b).

Considerations to be borne in mind by convening officer.

30. In forming his decision the convening officer will give due weight to the prevalence of the particular offence charged, to the general state of discipline in the corps or district, the character of the individual, and to all the different circumstances which may render it expedient at one time to try an offence by a district court-martial, and at another time to take a more serious view of it (c). A case should not, as a rule, be sent for trial unless there is reasonable probability that the accused person will be convicted; at the same time there may be cases where disgraceful charges have been preferred, and where a court-martial affords the only means to the accused of decisively clearing his character. In any event, members of courts-martial should not allow the fact of a case being sent for trial, or the fact of a particular description of court-martial having been selected, in any degree to influence their estimate of the evidence.

Removal of offender for trial.

31. It is directed by the King's Regulations that offenders are not to be sent home from stations abroad with charges pending against them, except in cases of necessity. But for the sake of convenience a person charged may be removed for trial from the place where he is serving, so long as he is not prejudiced in his defence by the change (d).

Notice to accused of charges, &c.

32. The convening officer having settled the charges on which the accused is to be tried, should take steps for having them communicated to the accused. The officer communicating the charges to the accused should always inquire whether he understands them, and if not should fully explain them to him. A copy of the charge sheet must always be given, except when, on active service, it is impracticable. The accused should, if he desires it, be informed of the officers by whom he is to be tried, as soon as they are named; and if he is to be tried together with other persons, he should always have notice given to him, so as to enable him to object on the ground that the evidence of the other persons is material to his defence. Reasonable steps are to be taken for procuring the attendance of any witnesses whom the accused desires to call (e). A person charged is not entitled to any list of witnesses for the prosecution, neither is he bound to give the prosecutor a list of his own witnesses (f).

(a) R.P. 17 (A), and note; K.R. 567.

(b) K.R., 548-551, 567, 568.

(c) K.R., 552.

(d) K.R., 569, 570.

(e) R.P. 14, 15, 78.

(f) R.P. 77.

33. The accused is to have proper opportunity to prepare his defence, and liberty to communicate with his witnesses and legal adviser, or other friend. This liberty is subject to the limitation that such persons are available, as the object of the rule is to give the accused full opportunity to prepare his defence, but not to enable him to postpone his trial (a).

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Accused to have opportunity of preparing defence.

34. When a court-martial assembles at the time and place named in the order, the members will take their seats according to their rank (b). If a judge advocate has been appointed, he must be present. The court is considered to be open, and the accused may be, but need not be, present during the preliminary proceedings. The charges and summary of evidence in the case of all the persons charged, if more than one, will be produced by the president.

Assembly of court.

35. The hours of sitting will usually be, in the United Kingdom, between 10 a.m. and 4 p.m., or 11 a.m. and 5 p.m.; elsewhere they will be regulated by general officers commanding, but a court should never sit more than eight hours during one day (c).

Hours of sitting.

36. The first duty of the court will be to read the order convening the court (d). This order will appoint the president, and detail or appoint the officers; and will notify the judge advocate appointed. If the order appears on the face of it to be proper, the court will have complied with Rule 22 (A) (i), requiring them to ascertain that the court has been convened in accordance with the Army Act and Rules.

Proceedings before commencement of trial.

37. The court will then proceed to ascertain that the proper number of officers is present, and that each of those officers is capable of serving; that is to say, is eligible and not disqualified to serve on the court-martial, and is of the rank required by the order convening the court (e). The eligibility of an officer depends on his status as an officer, that is, on his being subject to military law, and having held a commission for the required period (f). Disqualification is a personal question, and depends on his being, or having been, in any manner a party to the case (g). The corps to which officers belong, or their rank, is a matter merely for the convening officer, except that the court should ascertain that the provisions of Rules 20 and 21 are observed, and on the trial of a field officer, that none of the officers are under the rank of captain (h). If any officer appears not capable of serving he will retire, and one of the officers in waiting will be directed to serve in his stead, and his capacity of serving must be considered in the same manner. It will usually be convenient, where there are officers in waiting, to consider their capacity to serve before proceeding further.

Eligibility and freedom from disqualification of members of court.

38. The court will also ascertain that the president is of proper rank as required by the Army Act (i), and that the judge advocate is not disqualified (k).

Of president. Of judge advocate.

39. If at any stage of the above proceedings the court are not satisfied on any point, or the president appears to be ineligible,

Adjournment if court not properly constituted, or accused not properly charged.

(a) R.P. 13.

(b) R.P. 58.

(c) K.R., 579. R.P. 64.

(d) The form of proceedings to be followed in the case of a general court-martial is set out at length and in detail in R.P. App. II, to which reference should be made.

(e) R.P. 22 (A) (ii) and (iii); see above, paras. 9-11.

(f) A.A. 47 (2), 48 (3) (4); R.P. 19 (A) and (O).

(g) A.A. 50 (2) (3); R.P. 19 (B).

(h) A.A. 48 (7). See also R.P. 21 and 22.

(i) A.A. 47 (4), 48 (9), 182 (4).

(k) A.A. 50 (3); R.P. 22 (B), 101 (B).

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disqualified, or not of proper rank, or if officers by being found to be ineligible or disqualified are obliged to retire so as to reduce the number below the detailed number, the court in some cases must adjourn, and in others will find it expedient to adjourn, for the purpose of consulting the convening authority. Where, however, the number of officers is not reduced below the legal minimum, and the court consider that in the interests of justice and of the service it is inexpedient to adjourn, they can proceed, but must record their reasons (a).

Amenability of accused to jurisdiction.

40. The court, having ascertained the validity of their constitution, will then consider whether the accused to be tried is amenable to their jurisdiction and whether the charge is properly framed; if not satisfied the court should adjourn and report to the convening authority (b).

Prosecutor may be present.

41. As the court is an open court, the prosecutor may be present during the above proceedings, and may be consulted by the court; but he has no status before the court until after those proceedings are concluded.

Conclusion of preliminary proceedings.

42. On the conclusion of the above preliminary proceedings the prosecutor will assume his position as prosecutor, being required then to take his seat, and the accused, if not previously present, will be brought before the court (c). The accused, if an officer, will be in the custody of an officer; if a non-commissioned officer, in the custody of a non-commissioned officer; and if a private, in the custody of an escort. If necessary, an escort may be employed in any case.

Seat for accused, when allowed.

43. The accused is allowed a seat as a matter of course in the case of an officer, and in any other case when the court think proper. Accommodation is to be afforded, on the application of the accused, for his friend or counsel.

Objections by accused to members of court.

44. The accused will then be asked whether he objects to be tried by the president or any of the officers appointed to form the court. If he does so object, he will be asked to name all the officers to whom he objects. If the objections are more than one, each objection will be taken in succession, that to the junior officer in rank being taken first, except that an objection to the president must be disposed of before any other objection. The accused will be asked to state the grounds of his objection, and those grounds will be submitted to the other officers, even though some of them may have been objected to, and will be decided by them (d). If the objection to an ordinary member is allowed the officer will retire and one of the officers in waiting will be ordered to serve, subject to a similar right of objection by the accused. If the objection to the president is allowed, the court must adjourn. The mode of inquiring into and disposing of objections is detailed in Rules 25 and 71 (A) (B). An objection to the president must be allowed if one-third of the members are in favour of allowing it (e); objections to other officers must be allowed if allowed by one-half (f).

(a) R.P. 18 (A), 22 (C).

(b) R.P. 23.

(c) R.P. 24; K.R., 580. If the prosecution is instituted at the instance of a civilian, that civilian may be in court and assist the prosecutor, but he cannot speak or take part himself in the prosecution, except as a witness, as (subject to the rule as to counsel), the prosecutor must under this Rule be in every case subject to military law, though, of course, this requirement does not extend to counsel appearing for the prosecution.

(d) R.P. 25 (H).

(e) A.A. 51 (3).

(f) A.A. 51 (5).

45. If the officers are by reason of the objections being allowed **Ch. V.** reduced in number below the legal minimum, the court must adjourn for the appointment of fresh members. If the court is reduced in consequence of objections below the number detailed, but not below the legal minimum, and the majority of the members think that in the interests of justice and for the good of the service it is inexpedient to adjourn, they can record their reasons and proceed with the trial, but otherwise they should adjourn for the appointment of fresh members (a). On the appointment of a new president or of fresh members, the like procedure must be followed. Upon any such adjournment of the court the convening officer can, if he pleases, convene a new court, as the trial of the accused is not considered to begin until the court are sworn (b). Procedure if objections allowed.

46. After the disposal of any objections made by the accused the court will be sworn, if there is a judge advocate, by the judge advocate, and if not, by the president, the president being sworn by some member of the court who has been previously sworn. The form of oath is prescribed by the Army Act (c). Swearing of members.

47. After the members of the court are sworn the judge advocate and officers attending for the purpose of instruction will be sworn, and if it is intended to employ a shorthand writer or interpreter, he must be sworn also ; but a shorthand writer or interpreter may be sworn at any stage of the proceedings (d). The accused cannot object to a judge advocate, but has a right to object to a person proposed to be sworn as interpreter or shorthand writer on the ground that he is not impartial (e). The president will therefore inform the accused of the person intended to be sworn and ask him if he objects, and if so, on what ground. In certain cases a solemn declaration to the same effect as an oath may be substituted for the oath (f). Of judge advocate and officers attending for instruction.
Of shorthand writer and interpreter.

48. Where several offenders are to be tried, whether together or separately, the members of the court may be sworn at the same time to try all of them, but each person charged must be present, and asked separately if he objects to any member. One case will be taken first, and the others will be taken afterwards in succession (g). Court may be sworn to try several offenders.

49. As soon as the members and other persons are sworn, the accused will be arraigned. Arraignment consists in the judge advocate, or, if there is none, the president or some member of the court, reading each charge to the accused and asking him if he is guilty or not guilty of the charge. This will be done with each charge in a charge sheet (h). If the charges against the accused are contained in more than one charge sheet, the arraignment as well as the prosecution, defence, and finding, in the case of each charge-sheet, must be kept separate (i). Arraignment of accused.

50. Where several persons are charged with an offence committed collectively, any one of them may on his arraignment (if he has not done so before by notice to the convening authority) claim to be tried separately, on the ground that the evidence of some one or more of the other persons charged will be material to his defence. The court, if satisfied that the evidence will be material, must Claim of accused persons to be tried separately.

(a) R.P. 25, 18.

(b) R.P. 18 (B).

(c) A.A. 52 (1).

(d) R.P. 27, 72.

(e) R.P. 25 (B), 72 (C).

(f) A.A. 52 (4) ; R.P. 26.

(g) R.P. 71.

(h) R.P. 31.

(i) R.P. 62.

Ch. V. — allow the claim, unless the nature of the charge—as might be the case (for example) in a charge of mutiny—does not admit of its allowance (a).

Objection
by accused
to charge
before plea.

51. The accused before he pleads to a charge may object to its validity, and the court must either overrule the objection, or, if they think it valid, adjourn for the purpose of obtaining an amendment of the charge from the convening officer. A mere mistake, however, in the name or description of the accused may always be corrected by the court (b).

Plea to
jurisdiction
of court.

52. The accused may also offer a plea to the general jurisdiction of the court and give evidence in support of that plea. The court will decide this question of jurisdiction in the same manner as any other question. If the plea be overruled, the court will proceed with the trial; if it be allowed, the court must record its decision and reasons, report to the convening officer, and adjourn. If there is any doubt, the court may refer to the convening officer, or record a special decision and proceed with the trial (c).

Plea in bar.

53. A plea in bar of trial may also be offered by the accused, at the time of his general plea of "guilty" or "not guilty," on the ground that he has already been convicted or acquitted by a civil court or by a court-martial, or has been dealt with summarily by his commanding officer for the offence, or that the offence has been pardoned or condoned, or was committed more than three years ago, or, in the case of certain civil offences, not within the shorter period allowed for commencing proceedings. The plea must be recorded as well as the general plea of the accused, and may be supported by evidence. If the court find the plea not proven, they will proceed with the trial; if they find it proven, they will notify their finding to the confirming authority and adjourn, unless there is some other charge against the accused not affected by the plea. In either case, the finding requires confirmation (d).

Plea of
"guilty."

54. If the accused pleads guilty, the president should, before the plea is recorded, explain the charge to him so as to prevent his pleading guilty in consequence of ignorance of the exact nature of the charge or of the effect of the plea; and should also point out to him that with a plea of guilty there will be no regular trial, but merely a consideration of the proper amount of punishment, that he can only make a statement in mitigation of punishment, and call witnesses as to character, and that if he wishes to *prove* extenuating circumstances, or indeed to make any kind of defence whatever, he should plead not guilty (e).

Procedure
on plea of
"guilty."

55. If the accused, nevertheless, determines to plead guilty, the court will find him guilty, and will then proceed, after hearing any statement he desires to make, to read the summary or abstract of evidence, and annex it to the proceedings. If there is no summary or abstract (f), the court must take and record sufficient evidence to enable them to determine the sentence. The accused may then make a statement in mitigation of punishment, and the court may allow witnesses to be called in support of that statement. The accused may then call witnesses as to character. Should it

(a) R.P. 15. This rule is not affected by the right of the accused to give evidence. For though each person charged can, if he likes, give evidence, none of the others can compel him to do so.

(b) R.P. 32, 33.

(c) R.P. 34.

(d) R.P. 35.

(e) R.P. 35 and 37, and see notes to those Rules.

(f) There will be a summary of evidence in the case of regimental as well as in the case of general and district courts-martial.

appear to the court that the accused did not understand the effect of his plea of "Guilty," it will be their duty to enter a plea of "Not guilty," and to proceed with the trial (a). Oh. V:
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56. Where the accused refuses to plead, or pleads unintelligibly, a plea of not guilty must be recorded (b). A plea of not guilty can be withdrawn by the accused at any time during the trial, and in such case the procedure is substantially the same as in the case of an original plea of guilty (c). Refusal to
plead, &c.

57. On a plea of not guilty, the prosecutor will, if the case is complicated, make an opening address, giving an outline of the evidence he intends to call, but abstaining from any argument and comments not required to explain the nature of the case. The duty of the prosecutor is fully laid down and explained in Rules 39 and 60 and the notes thereto; and it is only necessary here to observe generally that the prosecutor is an officer of justice, whose first duty is to ascertain the truth—not to obtain a conviction independently of the truth; and that he is bound to act with scrupulous candour and fairness towards the accused and the court, and to conduct the case throughout in a fair and moderate spirit. Any deviation from the above line of conduct will be at once checked by the court (d). Plea of "not
guilty."

Duty of
prosecutor.

58. On the conclusion of his address, the prosecutor will call the evidence for the prosecution. The accused is at liberty to cross-examine the witnesses, and the prosecutor may then re-examine them on matters raised by the cross-examination (e). Examina-
tion of
witnesses
for prosecu-
tion.

59. At the close of the case for the prosecution, the accused will be called on for his defence. The course of procedure on the defence differs according to whether the accused does or does not call witnesses to the facts of the case other than himself. Defence of
accused.

The procedure when he does not call any witnesses to the facts other than himself is the same as when he calls no witnesses at all. The accused, if he wishes to do so, will give evidence as a witness, and may be cross-examined by the prosecutor, subject to the privileges mentioned in Chapter VI, paras. 93 and 93A. At the close of the evidence of the accused, or, if the accused has not given evidence, immediately on the close of the case for the prosecution, the prosecutor may sum up the case for the prosecution, and may comment on the evidence of the accused, if any, but he must not comment on the fact that the accused has not given evidence himself. The accused may then make an address in his defence, and call his witnesses (if any) as to character; and the judge advocate (if any) will then sum up, unless both he and the court think a summing up unnecessary, and the court will consider their finding.

60. If, on the other hand, the accused calls witnesses to the facts of the case other than himself, he may make an opening address; he will then call his witnesses (including himself if he wishes to give evidence), who may be cross-examined by the prosecutor and re-examined by the accused. The accused may then sum up his case in a second address, and the prosecutor may reply. After the reply of the prosecutor, the judge advocate (if any) will Procedure
if accused
calls wit-
nesses other
than wit-
nesses to
character.

(a) R.P. 37.

(b) R.P. 36 (A). As to procedure where a plea of guilty is recorded to one or more of the charges in a charge sheet, and a plea of not guilty to others, see R.P. 37 (A).

(c) R.P. 38.

(d) See R.P. 60, and note.

(e) R.P. 34; see R.P. 38, and note.

Ch. V. sum up, unless both he and the court think a summing up unnecessary, and the court will consider their finding (a). In exceptional cases witnesses in reply may be called for the prosecution before the second address of the accused (b).

If a person defended by counsel or by an officer exercises his right of making a statement (a right which he enjoys if he does not give evidence himself), the procedure will be, as far as possible, the same as if he had called witnesses to the facts of the case (c).

Latitude allowed in defence.

61. The accused is to be allowed great latitude in making his defence, and will not, within reasonable limits, be stopped by the court merely for making irrelevant observations (d). The court must never forget that the principle of English law is, that an accused person is presumed to be innocent until proved to be guilty, and that, although there are cases where the prosecution may, by proving certain facts, raise a presumption of guilt which the accused must rebut, yet, generally speaking, the burden of proof lies on the prosecution, and any doubt as to the sufficiency of proof must be decided in favour of the accused. Nor must it be forgotten that the right now enjoyed by the accused of giving evidence himself has not shifted the burden of proof. It is no more possible than formerly for the prosecution to rely on mere *prima facie* evidence of guilt, on the ground that were it not true the accused could go into the box and contradict it.

Court not to be influenced by supposed intention of convening officer.

62. The court, in considering their decision, should not allow themselves to be influenced by the consideration of any supposed intention of the convening officer in sending the case for trial. It may be very right to send for trial a person who, when tried, ought to be acquitted, and therefore an acquittal is not in itself a reflection on the convening officer. Even if it were, it would be no reason whatever for a court to convict, unless the evidence established the charge to their satisfaction.

Friend of accused.

63. The accused is allowed to have a friend to assist him, who may be either a legal adviser or any other person. If the friend is not a barrister, a solicitor, or an officer subject to military law, he can only advise the accused and suggest questions to be put by the accused to witnesses; but if he is a barrister, a solicitor, or an officer subject to military law, he has the rights and duties of counsel under the Rules (e).

Counsel.

64. Formerly counsel, though they could appear as advisers either of the prosecution or of the defence, could not address the court or examine witnesses orally. But now, by Rules 88-94, counsel who appear on behalf of either prosecutor or accused, have the same rights as to addressing the court, examining witnesses, and generally, as the persons whom they represent. A person defended by counsel or by an officer may, however, if he does not give evidence himself, make a statement, giving his own account of the subject of the charges, but cannot be sworn or cross-examined on it (f). The rights and conduct of counsel are regulated by the above-mentioned Rules, and by the Army Act, which provides a mode of enforcing the provisions of the Rules and due respect for the court (g).

(a) R.P. 40-42.

(b) R.P. 86 (B). As to the evidence of the accused himself, see R.P. 80.

(c) R.P. 94. The forms in Appendix II provide for every possible contingency.

(d) R.P. 60 (C).

(e) R.P. 87, 93 (B).

(f) R.P. 94.

(g) A.A. 129.

65. Every witness, whether for the prosecution or defence, is required either to be sworn or to make a solemn declaration (a). All questions are to be put to the witness direct by the prosecutor, accused, or judge advocate (b). If any improper question is addressed to the witness, the prosecutor, or accused, or judge advocate, or a member of the court, should object to the question before the witness answers it, and the objection will be disposed of before the witness answers (c). During the discussion on any such objection the witness may be ordered to withdraw. When not under examination, witnesses should not, as a rule, be allowed to be in court (d). Ch. V.
Examination of witnesses.

66. The evidence of every witness is to be read over to him before he leaves the court, and he may offer, or be called on by the court, to explain or to reconcile answers which may appear inconsistent. The explanation can be entered on the proceedings, only as an addition to the evidence previously recorded, and any discrepancy must, for the sake of justice and for the information of the officer whose duty it is to confirm the sentence, still appear, although the apparent contradictions may have been satisfactorily explained. Each party is allowed to question the witness as to such explanation (e). Evidence to be read over to witnesses.

67. At the request of the prosecutor or accused, a witness may be recalled by leave of the court at any time before the time for the second address of the accused. And where the witnesses for the accused have introduced new matter which the prosecutor could not reasonably have foreseen, he can, with the leave of the court, call or recall a witness to give rebutting testimony. The court can call or recall a witness at any time before the finding, but they should exercise this power with caution; and if they do exercise it, they should put to the witness any question which they are requested by the prosecutor or accused to put, unless they consider the question irrelevant (f). The court can also at any time put questions to witnesses; and should ordinarily put any question which the prosecutor or accused requests to be put after the conclusion of the re-examination or cross-examination (g). The court can also, in exceptional cases, themselves call witnesses who have not been called by either side (h). Recalling witnesses.

68. The allowances for the expenses of both military and civilian witnesses in attending courts-martial are regulated by the Army Allowance Regulations, to which reference must be made (i). Expenses of witnesses.

69. In India, if an interpreter be required, a qualified military officer is usually appointed. In the colonies, courts-martial usually call on the interpreters of the civil courts, where their services are available. A member of the court-martial is not disqualified from acting as interpreter, and may do so with advantage where the evidence to be interpreted is not likely to be protracted; but it is obvious that his acting as such through an extended proceedings Interpreter.

(a) R.P. 82. With respect to the examination, cross-examination, and re-examination of witnesses, see further, R.P. 84-86, and Ch. VI, paras. 104-119.

(b) As to the examination of the accused when giving evidence, see note 2 on R.P. 59.

(c) R.P. 83 (A).

(d) R.P. 81. This, of course, does not apply to a person on trial who gives evidence.

(e) R.P. 83 (B).

(f) R.P. 86, and note.

(g) R.P. 85, and see R.P. 86 (D).

(h) R.P. 86 (D), and note.

(i) See also R.P. 78 (A) as to cost of witnesses.

Ch. V. might bring him into collision with the parties, and be otherwise inconvenient.

Remarks on
employment of
interpreter.

70. The greatest caution should be exercised to ensure faithful translation, and to guard against misconception of the true meaning of any expression, either from the incompetence, or from the possible bias, of the person employed to interpret. The interpreter should render the very words as closely as possible, and not run the risk of obscuring the proper force of an expression by attempting to give the corresponding idiom, and the court may call on him to explain any part of his translation, and may refer to a second interpreter if they should entertain any doubt, or be desirous of further information. Upon a question being raised as to the precise meaning of the words used by a witness, they should instantly be taken down in the equivalent English character, when the language has a peculiar alphabet, or as near the sound as may be when it is not a written language (a). A party to the trial is at liberty to request the presence and assistance of a private interpreter, and may apply to the court to hear his version of the precise meaning of the witness's words, or an illustration on his part of any phrase which admits of a second construction; and the court will, according to the circumstances of the particular case, decide on the application, neither allowing unnecessary interruption on the one hand, nor restricting the accurate investigation required by justice on the other.

Court is
open, but
may be
closed for
delibera-
tion.

71. The court can deliberate in private, and may either withdraw for the purpose or cause the court to be cleared (b); but at other times the court must be open to the public, military or otherwise, so far as the room or tent in which the court is held can receive them. It is not usual to place any restriction on the admission of reporters for the press.

Absence of
member.

72. A member of a court who has been absent during any part of the evidence ceases to be a member (c).

Member
cannot
abstain
from
voting.

73. Every member of the court is bound to give his opinion on any question which comes before the court, and cannot abstain from voting. The opinions of members are taken in order, beginning with the junior in rank (d).

Finding.

74. The court must consider their finding in closed court; and the finding on each charge must be taken and recorded separately. The finding on a charge will be "guilty" or "not guilty," or "not guilty, and honourably acquit him of the same"; but the court may by a special finding find the accused guilty subject to a statement of exceptions or variations. If the court doubt whether the facts proved amount in law to the offence charged, they may refer to the confirming authority before recording their finding (e). In the case of certain specified offences, a person charged with one offence may be found guilty of a cognate offence though not charged: for example, a person charged with stealing may be found guilty of embezzlement, and *vice versa* (f). A recommendation to mercy will be recorded in the proceedings, with the reasons of the court, and promulgated and communicated to the

(a) R.P. 95 (B) note. There are other cases where it would be desirable to retain the original words in the proceedings, but it should in no case be allowed to remain without a translation, as many words which present no difficulty on the spot may yet be wholly unintelligible to the confirming authority.

(b) A.A. 53 (b), R.P. 63.

(c) R.P. 68.

(d) R.P. 69.

(e) R.P. 43, 44, and App. II to Rules. (Form of Proceedings in App. II, par. (10).)

(f) A.A. 56.

accused ; but, save as provided by the Rules, any expression of opinion as to anything occurring before the court, and any matter which the court may desire to report must be stated in a separate document (a). Ch. V.

75. If the court find the accused "not guilty" on all the charges, they will pronounce their finding in open court, and the accused will be discharged (b). Of "not guilty."

76. If, on the other hand, the court find the accused guilty of any charge, they will proceed to consider their sentence ; though before doing so, all the charges in all the charge sheets (if more than one) must, unless otherwise directed by the convening officer, be tried : and one sentence only can be awarded in respect of all the offences of which the accused is found guilty (c). Of "guilty."

77. The court should, unless it seems to be impracticable, before considering their sentence take evidence of the former convictions (if any) of the offender, and of the other particulars mentioned in Rule 46, and at the conclusion of the evidence the accused is entitled to address the Court thereon ; and, in addition, the prosecutor must call the attention of the Court to the fact (where that is the case) that their finding subjects the accused to some exceptional punishment such as forfeiture of corps pay, and the Court must inquire into the nature and amount of that punishment (d). Procedure on conviction preliminary to consideration of sentence.

78. The punishment awarded by the Court must be one of those allowed by the Army Act (e). For instance, a non-commissioned officer cannot be sentenced to a reprimand, nor can an army schoolmaster, unless he has been transferred from the ranks, be sentenced to reduction to the ranks. The sentence should follow the forms given (see Appendix II to the Rules), or if no form seems exactly applicable, should follow as nearly as possible the terms of the Army Act, and it will be dated and signed by the president. If there is a judge advocate, he also will sign the proceedings. The proceedings will then be sent for confirmation (f). Wording, date, and signature of sentence.

79. The "proceedings" are an entire record of the whole of the transactions of the particular court (g). They are kept under the orders of the judge-advocate or president, who is responsible for their accuracy and completeness. The form in which they are required to be recorded is prescribed by Appendix II to the Rules. Proceedings of court.

80. In deliberating on their sentence a court-martial should ever remember that the object of awarding punishment is the maintenance of discipline, and should bear in mind the considerations to which their attention is directed by the King's Regulations (h). The proper amount of punishment to be inflicted is the least amount by which discipline can be efficiently maintained. Occasionally the exigencies of discipline, apart from the circumstances of the particular case, may render a severe sentence necessary. But apart from special circumstances the court should not inflict a severe sentence merely because it has the power of a general court-martial ; and if a general court-martial is of opinion that the case is one for which a sentence of 28 days' detention is sufficient for the maintenance of discipline, the court should not inflict General observations on duty of a court-martial in awarding sentence.

(a) A.A. 53 (9). and note. R.P. 49, 95 (E).

(b) A.A. 54 (3).

(c) R.P. 48.

(d) R.P. 46.

(e) See A.A. 44 ; and as to Indian officers, 180 (2) ; as to warrant officers, 182 ; and as to non-commissioned officers, 183. See also K.R. 582.

(f) R.P. 50.

(g) See R.P. 45, 95-100.

(h) K.R. 583, which gives general instructions to courts-martial for awarding punishments.

Ch. V. a heavier sentence merely because the court is a general court-martial. So, again, if the accused has elected to be tried by a district court-martial, instead of submitting to the jurisdiction of his commanding officer, his punishment should not on that ground be increased; in fact, it can hardly in ordinary circumstances be necessary that the court should give a heavier sentence than that which the commanding officer has power to award.

Joint offenders. 81. Where several offenders are found guilty of the same offence, it may often be proper to award different degrees of punishment. In some cases it would appear that the degrees of criminality of the offenders are different; while in others regard will be paid to their relative rank. For example, a non-commissioned officer should as a rule be more severely punished than a private soldier concerned with him in the commission of the same offence.

Further observations. 82. The court has power to punish for contempt a person on trial, but its members should not allow themselves to award an unduly severe punishment through irritation at the conduct of the accused on his trial, or in consequence of the nature of his defence. If persons mixed up in the transaction forming the subject of the trial have been witnesses at the trial, the accused is entitled to impeach their motives and charge them with criminality; and if he oversteps the boundary of propriety in this respect, by making entirely groundless charges against them, or against other innocent persons, he can, if necessary, be tried for making false accusations (a).

Further observations; classification of offences. 83. Offences, considered in reference to the award of sentence, may be committed with or without premeditation, and with or without provocation; and beginning with the highest degree of criminality may be classified as follows:—

- (1.) Offences committed with premeditation and without provocation:
- (2.) Offences committed with premeditation and with provocation:
- (3.) Offences committed without premeditation and without provocation:
- (4.) Offences committed without premeditation and with provocation.

In cases of doubt as to the proper amount of punishment to be awarded, it will be useful to bear in mind this classification.

Repeated offences of individual. 84. Another material element in crime in reference to the individual is its frequency; in other words, an habitual offender deserves far greater punishment than an infrequent offender; and a first offence should always, if possible, be treated leniently.

General prevalence of offences. 85. Military offences, however, must be considered in reference to circumstances other than those immediately connected with the individual offender. When there is a general prevalence of offences or of offences of some particular class, an example may be necessary (b), and a severe punishment may justly be awarded in respect of an offence which otherwise would receive a more lenient punishment. In such cases the punishment for the offence must be regarded in reference to the effect to be produced on the military body to which the offender belongs, rather than in reference to the act of the individual himself.

Insubordinate language. 86. Military offences, unlike civil offences, frequently consist in words, *e.g.*, the use of insubordinate language. As a general

(a) See A.A. 27, and R.P. 60 (C), and notes.

(b) See note to instructions to courts-martial (p. 698), and K.R. 583 (footnote).

principle, the improper use of words should not be treated with the same severity as offences consisting in acts. Further, great care should be taken in discriminating between mere angry or irritable expressions, and words indicating a deliberate intention to be insubordinate or to resist lawful authority. A soldier frequently uses violent language which is a mere outburst of momentary irritation or excitement, without at all intending to be insubordinate. Again, allowance must be made for the coarse expressions which a man of inferior education will often use as mere expletives. Such expressions may be insubordinate if used to a commissioned officer, and not so when used to a non-commissioned officer, or when used in one set of circumstances, and not when used in another. Language, therefore, should be construed with due regard to all surrounding circumstances; and the intention of the man in using it should be carefully considered, before it is held to constitute the grave offence of using threatening or insubordinate language to a superior officer.

Ch. V.

87. In all cases the whole corps should have an opportunity of seeing that the punishment awarded to any individual is not more than is necessary, in the interests of the corps itself, and for the maintenance of discipline. Without discipline all military bodies become mobs, and worse than useless; but discipline enforced by punishment alone is a poor sort of discipline, which will not stand any severe strain. What must be aimed at is that high state of discipline, which springs from a military system administered with impartiality and judgment, so as to induce in all ranks a feeling of duty, and the assurance that, while no offence will be passed over, no offender will be unjustly dealt with.

Discipline
how best
maintained.

88. As the court have (save in the case of conviction of an officer under s. 16 of the Army Act, for conduct unbecoming an officer and gentleman, and in the case of a conviction for murder under s. 41 (2)) absolute discretion as to the sentence, a recommendation to mercy will be exceptional (a). It will usually be required only where the offence is in itself very serious, and where the court, though unwilling to pass a lenient sentence, lest the offence should be considered a venial one, think that, owing to the offender's character or other exceptional circumstances, he should not suffer the full penalty which the offence would ordinarily demand. As a rule, the court will be able to adjust the sentence according to what, in their judgment, the offender should suffer, having regard not only to the offence, but to the attendant circumstances and his character, so that the award may be final and carried into effect. It is indisputable that offences are more effectually prevented by certainty than by severity of punishment.

Recommendation
to mercy.

(iii.) *Proceedings subsequent to Finding and Sentence of Court-Martial.*

89. The acquittal by court-martial on any charge of an accused person is final, but a conviction and sentence are not valid until confirmed by superior authority (b). Where there is a judge advocate, he is responsible for transmitting the proceedings for confirmation; where there is not a judge advocate, this duty devolves on the president.

Confirmation
of proceedings.

(a) A.A. 53 (9), R.P. 49.
(b) A.A. 54 (3) (6).

Ch. V.

Of regi-
mental
court-
martial.

Of district
court-
martial.

Of general
court-
martial.

Warrant for
general
court-
martial.

In the
U.K.

In India
and else-
where
abroad.

Delegation
as to district
court-
martial.

Power of
confirming
authority
to send back
finding and
sentence for
revision.

90. The finding and sentence of a regimental court-martial are to be confirmed by the convening officer, or by the officer having authority to convene the court at the time of the submission of the proceedings (a).

91. The finding and sentence of a district court-martial are to be confirmed by an officer authorised to convene general courts-martial, or deriving authority to confirm from an officer authorised to convene general courts-martial (b).

92. The finding and sentence of a general court-martial are to be confirmed by His Majesty, or by an officer deriving authority to confirm either immediately or mediately from His Majesty (c).

93. This authority, where given by the King, is given by the warrant respecting courts-martial mentioned above. Any warrant, whether issued by the King or by an officer, may reserve any of the powers which would otherwise be conferred by it (d).

94. The warrant issued to an officer in the United Kingdom does not usually give authority to confirm the findings and sentences of general courts-martial, which, consequently, in the United Kingdom, require confirmation by the King.

95. The warrant issued to an officer commanding abroad usually gives authority to confirm the findings and sentences of general courts-martial, and to delegate that power. Where the officer is the Commander-in-Chief in India, and sometimes where he is commanding-in-chief on active service, the power of confirmation is given without any reservation, except at the option of the officer. In other cases, besides the optional reservation, the warrant reserves for confirmation, by the King, the finding and sentence, where a commissioned officer (e) is sentenced to death, penal servitude, cashiering, or dismissal. An officer commanding a force on active service serving in India, or proceeding from India, usually holds his warrant from the Commander-in-Chief in India; but if he comes under the command of an officer holding a warrant from the King, he can only exercise the confirming power by delegation from that officer.

96. Every officer empowered to convene general courts-martial has, by virtue of the Army Act, authority to confirm the findings and sentences of district courts-martial, and to delegate that power (f).

97. The confirming authority can order a revision once only; and the court must re-assemble and consider, without taking additional evidence, either the finding or the sentence, or both of them, as directed. If the finding only is sent back, and the court do not adhere to it, the court must also reconsider their sentence; but if the sentence only is sent back, they cannot revise the finding (g). On revision the court cannot for any reason increase the sentence (h). If the court adhere to their finding and sentence, the confirming authority can only either confirm or refuse confirmation. A conviction and sentence are not valid until confirmation,

(a) A.A. 54 (1) (a).

(b) A.A. 54 (1) (c), and 123.

(c) A.A. 54 (1) (b), and 122. As to field general courts-martial, see A.A. 54 (1) (d) and R.P. 120.

(d) See para. 22, above. As to promulgation of proceedings, see R.P. 53, and K.R. 593.

(e) This does not apply to a native commissioned officer in a colony, the finding and sentence on whom may, in all cases, be confirmed by the general officer commanding the forces in such colony, or at his option reserved for confirmation by the King.

(f) A.A. 123 1) (c).

(g) A.A. 54 (2), R.P.

(h) A.A. 54 (2).

and therefore a refusal of confirmation in effect annuls the whole proceeding, except where confirmation is withheld wholly or partly for the purpose of referring to superior authority (a). Ch. V.

98. The confirming authority can, when confirming the sentence, whether after revision or without it, mitigate, remit, commute, or suspend the punishment (b). After confirmation the punishment can only be mitigated, remitted, or commuted by the King, the Army Council, and the officer specified in the Army Act or prescribed by the Rules of Procedure for the purpose (c). But as this power cannot be exercised by any officer inferior to the authority who confirmed the sentence, an officer in the United Kingdom has no power to mitigate, remit, or commute a sentence passed by a general court-martial in the United Kingdom; and in the case of any court-martial held elsewhere, can only do so if his command is not inferior to that of the officer who confirmed the sentence, unless in either case he acts under orders from superior authority (d). Mitigation, remission, and commutation of punishment.

99. Sentence of death in a colony requires not only confirmation by the military authority, but also (save when passed in respect of an offence committed on active service) approval by the governor of the colony. In India, however, such approval is only required where the offence is treason or murder; but both in India and a colony a sentence of penal servitude for any offence tried as a civil offence under s. 41, requires the approval of the governor. The approval is required to be given in India by the Governor-General (e). Approval of sentence of death in colony.

100. An officer who confirms a sentence is responsible for seeing that the sentence is carried into effect, and for this purpose he will, where necessary, obtain the approval above required for a sentence of death, and in all cases will give the necessary directions for the execution of the sentence. If the sentence is approved by the King these directions will be given by the Army Council. Directions for execution of sentence.

101. Sentences of penal servitude, wherever passed, are (subject to the proviso mentioned in para. 104) required to be executed in the United Kingdom, and have the same effect as sentences of penal servitude passed by a civil court in the United Kingdom. Provision is made for bringing a penal servitude prisoner from any place out of the United Kingdom to a prison in the United Kingdom; and when once he is there he comes under the authority of the Home Secretary (f). Execution of sentence of penal servitude.

102. Sentences of imprisonment exceeding twelve months, wherever passed, are also (subject to the proviso mentioned in para. 104) to be executed in the United Kingdom. If not brought to the United Kingdom, a prisoner has to undergo his imprisonment either in military custody, or in some authorised prison, or in a detention barrack (g). He can, however, be temporarily confined in any other prison. Of imprisonment.

(a) A.A. 54 (5) (6), and note. As to the principles on which the power of commutation or mitigation is to be exercised, and remarks by confirming officer and promulgation, see K.R. 588, 589, 590, A.A. 53 (9), R.P. 53, 97 (A) note. A refusal to confirm should be signified in writing on the proceedings signed by the confirming authority, and the reasons for the refusal may be stated, see Form in Appendix II to R.P. para. (14).

(b) A.A. 57 (1), and note. R.P. 54.

(c) A.A. 57 (2); R.P. 126 (C).

(d) A.A. 57 (3).

(e) A.A. 54 (4) (7) (8) (9).

(f) A.A. 58-62, K.R. 602-606.

(g) A.A. 63-66. K.R., 607, 645, and see for the mode in which a term of imprisonment is to be awarded, K.R., 585, and generally as to disposal of military convicts, military prisoners, and soldiers undergoing detention, &c., K.R., 800-844.

- Ch. V.** **103.** Sentences of detention exceeding twelve months must (subject to the proviso mentioned in para. 104) also be executed in the United Kingdom. Detention has to be undergone either in military custody, or in a detention barrack, but a soldier sentenced to detention cannot be confined in a prison. In the United Kingdom sentences of detention may be undergone in a branch detention barrack, or barrack detention rooms; but where they exceed fourteen days, should be carried out in a detention barrack (a).
- Of deten-**
tion.
- Further**
provisions. **104.** An offender sentenced to penal servitude, imprisonment, or detention, need not be brought to the United Kingdom, if he belongs to a class with respect to which the Secretary of State has declared that by reason of climate or place of birth or of enlistment, it is not beneficial to the offender to transfer him to the United Kingdom. Nor need an offender sentenced to imprisonment or detention be brought to the United Kingdom, if the court or other authority mentioned in s. 131 for special reasons otherwise orders (b).
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(a) A.A. 63; and K.R. 645.

(b) A.A. 131 (2), Note 2 to which states the regulations made by the Secretary of State.

CHAPTER VI.

EVIDENCE.

Introductory.

1. The rules of evidence are the rules which regulate the mode in which questions of fact may be determined for judicial purposes. The object of every criminal trial is, or may be, to determine two classes of questions—questions of fact and questions of law. If the accused person pleads guilty, there is no question of fact involved in the trial; but if he does not, he raises two questions or issues: first, whether the facts charged against him happened; and next, if they did happen, what is their legal consequence.

Meaning of
"Rules of
Evidence."

2. In trial by jury, these two questions are answered by different persons. The jury, *under the guidance of the judge*, find the facts. The judge lays down the law. It was with reference to trial by jury that the English rules of evidence were originally framed, and it is to this mode of trial that they are still primarily applicable. They are, in fact, the rules in accordance with which a judge guides a jury. In trials before courts-martial, the members of the courts both find the facts and lay down the law, and thus perform the functions of both jury and judge. It therefore becomes their duty, when applying their minds to questions of fact, in the capacity of jurymen, to consider themselves bound by the rules which, in the case of an ordinary trial by jury, are laid down by the judge.

English
rules of
evidence
primarily
applicable
to trial by
jury.

3. Now, a jurymen is supposed to bring with him to the consideration of the questions which he has to try common sense, and a general knowledge of human nature and of the ways of the world. But he is not supposed to bring with him any special knowledge enabling him to answer the particular questions of fact raised in the trial. His knowledge of these matters is derived from what is proved to him at the hearing. The means of proof, or evidence, usually consists of statements made by witnesses under examination, or of documents produced for inspection, and is therefore commonly classified as being either oral evidence or documentary evidence. But the jury, or, in the case of trials by court-martial the members of the court, may supplement by direct information the knowledge derived from these sources. Thus they may inspect for themselves anything sufficiently identified by evidence, and produced in court as material to their decision; or they may go to view any place the sight of which may help them to understand the evidence.

Nature of
evidence.

4. There is no difference in principle between the method of inquiry in judicial and in extra-judicial proceedings. In either case a person who wishes to find out whether a particular event did or did not happen tries, in the first place, to obtain information from persons who were present and saw what happened (*direct evidence*), and, failing that, to obtain information from persons who can tell him about facts from which he can draw an inference as to whether the event did or did not happen (*indirect evidence*). But in judicial inquiries the information given must be on oath, and be

Difference
between
judicial and
non-judicial
inquiries.

Ch. VI. liable to be tested by cross-examination, and there are certain rules of law which exclude from the consideration of a jury particular classes of indirect evidence which an ordinary inquirer would naturally take into consideration. Statements so excluded are said to be "not admissible as evidence," or "not evidence" (a). And if a member of a court-martial is in doubt whether a statement which it is proposed to make to him is, or is not, admissible as evidence, the most useful advice that can be given to him is, first to use his common sense as to whether the matter proposed to be proved has any practical bearing on the question which he has to try, and, if he thinks that it has, then to consider whether it falls within any one of the negative or exclusive rules of law to which reference has been made.

Reasons for excluding certain classes of evidence in judicial inquiry.

5. The answer to the question why particular statements should be excluded from evidence in judicial inquiries is that their exclusion has been found by practical experience useful on various grounds, and notably on the following:—

1. It assists the jury.
2. It secures fair play to the accused.
3. It protects absent persons.
4. It prevents waste of time.

It assists the jury by concentrating their attention on the questions immediately before them, and preventing them from being distracted or bewildered by facts which either have no bearing on the questions before them, or have so remote a bearing on those questions as to be practically useless as guides to the truth, and from being misled by statements, the effect of which, through the prejudice which they excite, is out of all proportion to their true weight. It secures fair play to the accused, because he comes to the trial prepared to meet a specific charge, and ought not to be suddenly confronted by statements which he had no reason to expect would be made against him. It protects absent persons against statements affecting their characters. And, lastly, it prevents the infinite waste of time which would ensue if the discussion of a question of fact in a court were allowed to branch out into all the subjects with which that fact is more or less connected.

Evidence in courts-martial to be governed by English law.

6. The rules of evidence to be followed by courts-martial are to be those adopted in courts of ordinary criminal jurisdiction in England (b). These rules are to be found in the ordinary text-books on the subject, such as Taylor on Evidence, Roscoe's Digest of the Law of Evidence in Criminal Cases, Stephen's Digest of the Law of Evidence, and Wills' Theory and Practice of the Law of Evidence; but as only a limited number of these rules are from the nature of the case applicable to proceedings before courts-martial, it is thought that it may be useful to state and illustrate shortly the most important of those which are so applicable.

Matters with which rules of evidence are concerned.

7. The principal matters with which the rules of evidence are concerned may, for the purpose of this chapter, be classified as follows:—

- (i.) *What must be proved.*
- (ii.) *What facts are assumed to be known* (judicial notice).
- (iii.) *By which side proof must be given* (burden of proof).

(a) The two phrases illustrate the wider and narrower sense of the term "evidence." In its narrower sense it means that kind of evidence which is recognised by courts of law.

(b) A.A., ss. 127 and 128; Criminal Evidence Act, 1898 (61 & 62 Vict., c. 36); and R.P. 73.

- (iv.) *What statements are admissible as evidence* (admissibility of evidence). **Ch. VI.**
- (v.) *When admissions or confessions may be admitted as evidence.*
- (vi.) *Who may give evidence* (competency of witnesses).
- (vii.) *What questions need not be answered and what documents need not be produced* (privilege of witnesses).
- (viii.) *How evidence is to be given.*

(i.) *What must be proved.*

8. What must be proved, in order to obtain a conviction, is the particular charge brought. As a general rule, every charge alleges, or ought to allege, a specific offence constituting a breach of a specific enactment (a); and, subject to certain exceptions, it is of this offence, and of this offence alone, that the person charged can be convicted. The reason for the rule is the unfairness of requiring a person to meet a charge for which he is not prepared. And the exceptions will be found not to conflict with this reason, since they relate either to cases where the distinction between two offences is mainly technical; or to cases where the distinction is one of degree, but not of kind, and the accused, having been charged with the more serious, is allowed to be convicted of the less serious offence (b). The former class of cases is illustrated by the enactments providing that a person charged with felony may, in certain cases, be convicted of a misdemeanour; and that a person charged with stealing may be convicted of embezzlement, and *vice versa*. The second class is illustrated by the common law rule that on an indictment for murder, if the prosecutor fails in proving malice prepense, the accused may be convicted of manslaughter; and by the provisions contained in s. 56 (3) (5) of the Army Act.

Charge brought must be proved.

9. It is the substance only of the charge that need be proved. Allegations which are not essential to constitute the offence, and which may be omitted without affecting the validity of the charge, do not require proof, and may be rejected as surplusage (c). In some cases, as in charges against a sentinel for misbehaviour on his post, or in a charge for not giving immediate notice of desertion (d), the time or place of the offence is material; but as a rule it is not so. Where the court think that the facts proved differ materially from the facts alleged, but prove the same charge, they are empowered by Rule 44 (B) to record a special finding, instead of a finding of "Not guilty."

Substance only of charge need be proved.

(ii.) *What facts are assumed to be known.*

10. The court are said to take judicial notice, in other words not to require evidence, of any facts which are so generally known as not to require special proof. By Rule 74 the court are expressly authorised to take judicial notice of all matters of notoriety, including all matters within their general military knowledge. Thus, evidence need not be given as to the relative rank of officers, as to the general duties, authorities, and obligations of different

Judicial notice.

(a) See R.P. 9-12, and 23. As to offences of conduct to the prejudice of good order and military discipline, see s. 40 of the Army Act, and Ch. III, para. 32.

(b) A.A. 56 (4), which allows a person charged with attempting to desert to be found guilty of desertion, cannot be placed under either of these heads of exceptions, but is in a class by itself.

(c) See R.P. 9-12, and 23, and as to particulars of time and place in the charge, see Note as to use of Forms of Charges (18)-(22), at the beginning of Appendix I to the Rules.

(d) See A.A. 6 (1) (k), 14 (2).

Ch. VI. — members of the service, or generally as to any matters which an officer, as such, may reasonably be expected to know (a). Nor, again, would it be necessary to prove that an important battle was fought on the 18th of June, 1815.

Matters of which judicial notice will be taken.

11. Among the matters of which it is the duty of all judges to take judicial notice may be mentioned:—Acts of Parliament: the general course of proceedings and privileges of Parliament, the date and place of the sittings of each House, but not transactions in their journals; the course of proceedings and rules of practice in the Supreme Court of Judicature; the accession of the King; the existence and title of every State and Sovereign recognised by the King; the Great Seal, the Privy Seal, the Seals of the Superior Court of Justice; the seal of any notary-public in the British Dominions, and various other seals; the extent of the territories under the dominion of the Crown, and the territorial and political divisions of the different parts of the United Kingdom; the ordinary course of nature, natural and artificial divisions of time, and the meaning of English words; and all other matters which they are directed by any statute to notice.

(iii.) *By which side Proof must be given.*

Burden of proof.

12. In considering the practice as to the burden of proof regard must be had to two rules; *first*, that every man is presumed to be innocent until he is proved to be guilty; and, *second*, that he who alleges a fact must prove it, whether the allegation is couched in affirmative or negative terms. It follows from both these rules that it is incumbent on the prosecution in the first instance to give evidence of the commission of the offence, and connecting the accused with the commission, and that then, but not till then, the accused is bound to prove any facts from which he wishes the court to infer his innocence. The rule that he who alleges a fact must prove it, even though the allegation is couched in negative terms, is subject to two exceptions:—

- (1) Some statutes expressly provide that the proof of lawful excuse, or authority, or the absence of fraudulent intent, shall lie on the person charged, although by the terms in which the offence is defined they are expressly made elements of the offence, as in the statute making it criminal to be found by night in the possession of housebreaking implements without lawful excuse (b);
- (2) Where the subject of the negative assertion is peculiarly within the knowledge of the accused, he must prove it as a matter of defence. For instance, in a charge of leaving the ranks or a post without orders, absence without leave, releasing a person without authority, or detaining a person unnecessarily (c), it would lie on the person charged to prove that the requisite orders, leave or authority had been given, or that the necessity existed. On the other hand, when a soldier is charged with breaking out of barracks (d), it would lie on the prosecutor in the first instance to prove that the accused had no right to quit them.

(a) See A.A. 6 (1) (c), 8, 10 (3), 17 and 25 (1), as illustrations of matters which would be presumed to be within the general military knowledge of an officer.

(b) Larceny Act, 1861 (24 & 25 Vict., c. 96), s. 58.

(c) See A.A. 5 (1), 6 (1) (b), 15, 20 (1), 21 (1).

(d) A.A. 10 (4).

18. As the trial goes on, the burden of proof may be shifted from the prosecutor to the accused by the proof of facts which raise a presumption of his guilt. Thus A. is accused of stealing a five-pound note. The burden of proof is on the prosecution. He is shown to be in possession of the note soon after the fact. The burden of proof is shifted to A. A. shows that the note was given him in change for a ten-pound note. The burden of proof is shifted to the prosecution.

Ch. VI.
Shifting of
burden of
proof.

14. Where it is proved that an unlawful act has been committed, a criminal intention is presumed, and the proof of justification or excuse lies on the accused. On a charge of murder, the law presumes malice aforethought from the act of killing, and throws on the accused the burden of disproving the malice by justifying or extenuating the act. On a charge of wilfully maiming or injuring with intent to render unfit for service, the intent will be presumed if it is shown that the act was wilfully done (a).

Presump-
tion of
intent from
unlawful
act.

(iv.) *What statements are admissible as Evidence.*

15. It has been remarked above that there are certain rules which exclude from consideration on judicial inquiries classes of evidence which would be taken into consideration on ordinary inquiries. The most important of these negative or exclusive rules may, with reference to criminal proceedings, be stated as follows:—

Rules as to
admissi-
bility of
evidence.

I. Nothing shall be admitted as evidence which does not tend immediately to prove or disprove the charge.

Rule of
relevancy.

II. The evidence produced must be the best obtainable under the circumstances.

Rule of best
evidence.

To these may be added, subject to important qualifications:—

III. Hearsay is not evidence.

Hearsay.

IV. Opinion is not evidence.

Opinion.

16. The form in which the first rule is expressed shows the vagueness, and, it may be added, the necessary vagueness, of its character. What classes of facts "tend immediately" to prove or disprove a charge? Or, to use a more technical expression (b), what facts are "relevant"? To this question no direct answer can be given. No precise line can be drawn between "relevant" and "irrelevant" facts. All that can be done is to state certain subordinate rules illustrating the kind of line which experience has induced courts to draw with respect to particular classes of facts. Common sense must supply the rest.

I. Rule of
relevancy.

17. In the first place the character or general reputation of the accused person is not admissible as evidence of his guilt. This rule is most important to prevent the injustice which might arise from prejudice or unpopularity. "Give a dog a bad name and hang him," represents the popular instinct. "A man shall not be convicted because he has a bad name," says the law. For this reason the prosecutor may not give evidence of character, except to rebut evidence to a contrary effect given on behalf of the accused (c).

Character
not
evidence for
prosecu-
tion.

18. On the other hand, the accused may call witnesses to speak generally as to his character. The evidence, however, of such witnesses must be confined to the general reputation of the accused

Character
admissible
as evidence
for defence.

(a) See A.A. 18 (2).

(b) See R.P. 73 (A).

(c) As to reply to witnesses to character called by the accused, see R.P. 40 (3) (B), 86 (C). The Court may also, after conviction, for their guidance in determining the sentence, take evidence as to the character of the accused (R.P. 46).

Ch. VI. for good character, and evidence of particular cases of praiseworthy conduct in the accused is not properly admissible. This general reputation for good character may be evidenced by showing that the record of the accused in the conduct book is good, or that his superior officers have publicly approved of the way in which he has conducted himself while in the service.

Effect of
evidence as
to character.

19 Evidence of general good character cannot avail the accused against evidence of the fact, but where some reasonable doubt exists as to his guilt, it may tend to strengthen a presumption of innocence; and where intention is a principal element in the offence, or where presumptive proof only is adduced, evidence as to character, bearing on the charge, may be highly important, and serve to explain the conduct of the accused. On a trial for treason, Lord Kenyon observed, "An affectionate and warm evidence of character, when collected together, should make a strong impression in favour of a prisoner; and when those who give such a character in evidence are entitled to credit, their testimony should have great weight with the jury." On a charge of murder, where malice is the essence of the crime, expressions of goodwill and acts of kindness by the accused towards the deceased are always considered important evidence, as showing what was his general disposition towards the deceased, and leading to the conclusion that his intention could not have been that imputed to him. On a charge of stealing, character for honesty may be entitled to great weight. So also on a charge implicating the courage of a soldier, character for bravery and resolution might be of vast importance. But it would be manifestly absurd and irrelevant, on a charge of stealing, to allow character for bravery to weigh in the scale of proof; or on a charge of cowardice, to be biased by a character of honesty. General character, unconnected with the charge, though it may not weigh with the court, except in awarding punishment in discretionary cases, may essentially serve the accused, by influencing the superior with whom it rests to mitigate or remit the sentence.

Evidence of
facts tend-
ing to show
general
disposition
not admis-
sible.

20. Evidence that the person accused of an offence committed a like offence or acted in a similar manner on another occasion, is not admissible merely for the purpose of showing that he has a general disposition to commit such offences. Thus, on a charge of murder, the prosecutor cannot give evidence of the conduct of the accused in respect of other persons for the purpose of proving a blood-thirsty and murderous disposition. So, on a charge against a sentry of having been asleep on his post on a particular occasion, evidence that he had been found asleep on his post on other occasions would not be admissible for the purpose of showing that he would be likely to commit the offence; and on a charge of insubordination, evidence of insubordinate conduct on other occasions would not be admissible for the purpose of showing a tendency to insubordinate conduct (a).

Where
several
offences
connected,
evidence of
one admis-
sible as
proof of
another.

21. But where several offences are so connected with each other as to form part of an entire transaction, evidence of one is admissible as proof of another. On a charge of stealing, for example, though it is not material in general to inquire into any other taking of goods besides that specified in the charge, yet for the purpose of ascertaining the identity of the person, it is often important to show that other goods which had been upon an adjoining part of the same house and grounds were taken in the

(a) See, however, below, para. 93 (1).

same night, and afterwards found in the possession of the accused. This is strong evidence of the accused having been near the owner's house on the night of the robbery; and from that point of view it is material. Thus, also, to prove the crime of arson, it may be shown that property which had been taken out of the house at the time of the firing was afterwards found secreted in the possession of the accused. So, on a charge of desertion, it may be admissible to inquire into the fact of (*not* the facts attending) a highway robbery which had been committed by the accused on the night on which he absented himself, and for which he had been tried and convicted by a civil court. The crime of desertion, depending on the intention not to return, might be inferred, in connection with other circumstances, from the commission of a heinous offence; and such collateral evidence is admissible to prove the intention of the accused.

22. And where intention, knowledge, belief, malice, or any other state of mind, is a necessary element of the offence charged, the commission of the principal act being either admitted or proved, evidence may, for the purpose of proving the existence of such a state of mind in reference to the particular matter in question, be given of similar acts committed by the accused on different occasions. Thus, although on a charge of murder evidence as to the disposition of the accused, is, as has been stated, inadmissible, yet former attempts by him to assassinate the deceased are admissible, as a proof of intention. So also evidence is admissible as to former menaces or expressions of vindictive feeling towards the deceased. Again, on a charge of uttering base coin, proof that the accused uttered base coin on other occasions is admissible as evidence that he *knew* the coin to be base; and on a charge of obtaining credit by means of fraud, where it was proved that the accused hired furnished apartments and left them without paying for them, evidence that he had also gone to other houses and left without paying was held admissible as negating the existence of any reasonable or honest motive (a).

Facts showing intention; knowledge, belief, &c.

23. In support of a charge for insubordinate language addressed by word of mouth, or written to, or used of, a superior officer at a stated time, or in a particular letter, after having proved the words in the charge, the prosecutor, to show the spirit and intention of the accused, may prove also that he spoke or wrote either disrespectful or malicious words on the same subject, either before or afterwards, or that he published or disseminated copies of the letter set forth as disrespectful in the charge. This evidence is admissible, not in aggravation of the offence charged, but for the purpose of proving the deliberate malice or disrespect imputed in the charge; and the accused may give in evidence, as negating a deliberate purpose, or as palliating, though not justifying his conduct, that he had been provoked to act as he had by the conduct of his superior towards him. So, on an indictment for malicious shooting, if it is questionable whether the shooting was by accident or design, proof may be given that at another time the accused intentionally shot at the same person.

Facts showing intention (further illustrations).

24. Where the charge is of a nature which makes the intention a principal issue, as where a person is charged with treason, or with a design to undermine the influence of the commanding officer, an inquiry may be allowed into the conduct and sentiments

Facts showing intention (further illustrations).

(a) *R. v. Wyatt*, L.R. [1904] 1 K.B., 188.

Ch. VI. of the accused on particular occasions, but with reference only to the overt act laid or specified in the charge, and to the transactions proved against him. The intention of one particular act may be best evinced by other contemporaneous actions, but great caution is needed to prevent injustice to the accused by extending the inquiry to matters wholly unconnected with the charge. It would be the height of injustice to allow such an attack upon him as would involve the necessity of his entering unprepared and at once on the defence of every action of his life.

Evidence as to motive, preparation, subsequent conduct, or consequences admissible.

25. Again, where there is a question whether a person committed an offence, evidence may be given of any fact supplying a motive or constituting preparation for the offence, of any subsequent conduct of the person accused, which is apparently influenced by the commission of the offence, and of any act done by him, or by his authority, in consequence of the offence. Thus, evidence may be given that, after the commission of the alleged offence, the accused absconded, or was in possession of the property, or the proceeds of property, acquired by the offence, or that he attempted to conceal things which were or might have been used in committing the offence, or as to the manner in which he conducted himself when statements were made in his presence and hearing.

Acts of conspirators.

26. In cases of conspiracy, after *prima facie* evidence has been given of the existence of the plot, and of the connection of the accused therewith, the charge against one conspirator may be supported by evidence of anything done, written, or said, not only by him, but by any other of the conspirators, in furtherance of the common purpose. Thus on the consideration of a charge of mutiny, or exciting mutiny, evidence of this kind may, after such *prima facie* proof, be received against a particular one of the accused.

Statements not forming part of conspiracy inadmissible.

27. Statements of the class above described are admissible as evidence, if they are made in execution of the common purpose, because they form part of the transaction to which the inquiry relates (a). But a statement made by one conspirator, not in execution of the common purpose, but in narration of some event forming part of the conspiracy, falls within the rule of hearsay, to which reference will be made hereafter, and is not admissible as evidence against another conspirator, unless made in his presence (b). In consequence of this distinction, the admissibility of writings often depends on the time when they are proved to be in the possession of fellow conspirators, whether it was before or after the apprehension of the accused.

Illustrations of evidence admissible on charge of conspiracy.

28. Thus, on the trial of a person for a treasonable conspiracy, some papers, containing a variety of plans and lists of names, which had been found in the house of a co-conspirator, and which had a reference to the design of the conspiracy, and were in furtherance of the plot, were held to be admissible as evidence against the accused. All the judges were of opinion that these papers ought to be received in the case, inasmuch as there was strong presumptive evidence that they were in the house of the co-conspirator before the apprehension of the accused, for the room in which the papers were found had been locked up by one of the conspirators. And the judges distinguished the point in this case from a case cited where the papers were found, after the apprehension of the accused, in the possession of persons who possibly might not have obtained the papers until afterwards.

(a) See below, paras. 51, 52.

(b) See *R. v. Blake*, 6 Q. B., 126; *Stephen Dig. Ev.*, p. 6 and 7; *Wills*, pp. 116 et seq.

29. As in trials for conspiracies, whatever the accused may have done or said at any meeting alleged to have been held in pursuance of the conspiracy may be given in evidence against him on the part of the prosecution, so, on the other hand, any other part of his conduct at the same meeting will be allowed to be proved in his behalf: for his intention and design at a particular time are best explained by a complete view of every part of his conduct at that time, and not merely from the proof of a single isolated act or declaration.

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Acts and declarations of accused when evidence for him in conspiracy cases.

30. The meaning of the rule that the evidence produced must be the best obtainable under the circumstances, is this. No evidence which leads us to suppose that other and better evidence remains behind can have any weight, as the production of such inferior evidence suggests that there is some secret or sinister motive for withholding the better and more satisfactory evidence.

II. Rule as to best evidence.

31. The rule in question is more strictly enforced with regard to documentary evidence than with regard to oral evidence, and is usually applied in the form of the two well-known sub-rules: (1) That a verbal account of the contents of a document can never be received if the document itself is obtainable: (2) That, subject to certain exceptions, a copy of a document is not admissible when the original document can be produced. In these cases the document itself is said to be primary, whilst the verbal account, or the copy, is called secondary evidence.

Rule chiefly applicable to documents.

Primary and secondary evidence.

32. Primary evidence of the contents of a document is given by producing the document for the inspection of the court.

Primary evidence of document.

33. If the document is of a kind which is required by law to be attested, but not otherwise (a), it is also necessary to call an attesting witness to prove its due execution. But this rule is subject to the following exceptions:—

Attested and un-attested documents.

(a) If it is proved that there is no attesting witness alive, and capable of giving evidence, then it is sufficient to prove that the attestation of at least one attesting witness is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

(b) If the document is proved, or purports to be, more than thirty years old, and is produced from what the court considers to be its proper custody, an attesting witness need not be called, and it will be presumed without evidence that the instrument was duly executed and attested.

34. The rule as to the inadmissibility of a copy of a document is applied much more strictly to private than to public or official documents.

Distinction between private and public documents.

35. Secondary evidence may be given of the contents of a private document in the following cases:—

Secondary evidence of private documents, when admissible.

(a) Where the original is shown or appears to be in the possession of the adverse party, and he, after having been served with reasonable notice to produce it, does not do so.

(b) Where the original is shown or appears to be in the possession or power of a stranger not legally bound to produce it, and he, after having been served with a writ of *subpoena duces tecum*, or after having been sworn as a witness and asked for the document, and having admitted that it is in court, refuses to produce it.

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- (c) Where it is shown that proper search has been made for the original, and there is reason for believing that it is destroyed or lost.
- (d) Where the original is of such a nature as not to be easily movable (a), or is in a country from which it is not permitted to be removed.
- (e) Where the original is a document for the proof of which special provision is made by any Act of Parliament, or any law in force for the time being (b).
- (f) Where the document is an entry in a banker's book, provable according to the special provisions of the Bankers' Books Evidence Act, 1879 (42 & 43 Vict., c. 11).

Secondary evidence of private documents, how given.

36. Secondary evidence of a private document is usually given either by producing a copy and calling a witness who can prove the copy to be correct, or when there is no copy obtainable, by calling a witness who has seen the document, and can give an account of its contents.

Public documents, what deemed to be.

Primary and secondary evidence of public documents.

37. No general definition of public documents is possible, but the rules of evidence applicable to public documents are expressly applied by statute to many classes of documents. Primary evidence of any public document may be given by producing the document from proper custody, and by a witness identifying it as being what it professes to be. Public documents may always be proved by secondary evidence, but the particular kind of secondary evidence required is in many cases defined by statute. Where a document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no statute exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom is admissible as proof of its contents, if it is proved to be an examined copy or extract, or purports to be signed and certified as a true copy or extract by the officer to whose custody the original is intrusted (c).

Certified copies.

38. It is provided by many statutes that various certificates, official and public documents, documents and proceedings of corporations and of joint stock and other companies, and certified copies of documents, bye-laws, entries in registers and other books, shall be receivable as evidence of certain particulars in courts of justice, if they are authenticated in the manner prescribed by the statutes. Whenever, by virtue of any such provision, any such certificate or certified copy is receivable as proof of any particular in any court of justice, it is admissible as evidence, if it purports to be authenticated in the manner prescribed by law, without calling any witness to prove any stamp, seal, or signature required for its authentication, or to prove the official character of the person who appears to have signed it (d).

Provisions of Documentary Evidence Act as to certain documents.

39. Under s. 2 of the Documentary Evidence Act, 1868 (31 & 32 Vict., c. 37), *prima facie* evidence of any proclamation, order, or regulation issued by His Majesty, or by the Privy Council, also of any proclamation, order, or regulation issued by or under the authority of any such department of the Government or officer as

(a) e.g., a placard posted on a wall, or a tombstone.

(b) These are practically treated on the same footing as public documents.

(c) 14 & 15 Vict. c. 99, s. 14.

(d) 8 & 9 Vict., c. 113, preamble, and s. 1, and Steph., Dig. Ev., art. 79. A certificate, &c., so receivable is merely handed in to the Court by the party producing it.

is mentioned in the first column of the schedule to the Act (a), may be given in all courts of justice, and in all legal proceedings, whatsoever, in all or any of the following modes:—(1.) By the production of a copy of the *Gazette*, purporting to contain the proclamation, order, or regulation: (2.) By the production of a copy of the proclamation, order, or regulation purporting to be printed by the Government printer (b), or, where the question arises in a court in any British colony or possession, of a copy purporting to be printed under the authority of the legislature of that colony or possession: (3.) By the production, in the case of any proclamation, order, or regulation issued (i) by His Majesty, or the Privy Council, or (ii) by any of the departments specified in the schedule, of a copy or extract purporting to be certified as true either (i) by the clerk or any Lord of the Privy Council, or (ii) by the proper certifying officer specified in the second column of the schedule.

Any copy or extract made in pursuance of the Act may be in print or in writing, or partly in print and partly in writing; and no proof is required of the handwriting or official position of any person certifying in pursuance of the Act, to the truth of any copy of or extract from any proclamation, order, or regulation.

40. Special provision is made by the Army Act for proving, by means of copies, attestation papers on enlistment, King's Regulations, Royal Warrants, and rules, warrants, and orders made in pursuance of the Act, records in regimental books, and proceedings of courts-martial (c).

Special provisions of Army Act as to documents provable by copies.

41. In connection with the rule as to best evidence, reference may be made to the distinction between direct and indirect evidence. By direct evidence is meant the statement of a person who saw, or otherwise observed with his senses, the fact in question. By indirect, or as it is often called, circumstantial evidence, is meant evidence of facts, from which the fact in question may be inferred or presumed. The rule as to best evidence has no application to the difference between direct and indirect evidence.

Rules as to best evidence not applicable to distinction between direct and indirect evidence.

(a) The schedule as supplemented by the Documentary Evidence Act, 1896 (58 Vict., c. 9), is as follows:—

COLUMN I. Name of Department or Officer.	COLUMN II. Names of Certifying Officers.
The Commissioners of the Treasury.	Any Commissioner, Secretary, or Assistant Secretary of the Treasury.
The Commissioners for executing the office of Lord High Admiral.	Any of the Commissioners for executing the office of Lord High Admiral, or either of the Secretaries to the said Commissioners.
Secretaries of State.	Any Secretary or Under Secretary of State.
Committee of Privy Council for Trade.	Any member of the Committee of Privy Council for Trade, or any Secretary or Assistant Secretary of the said Committee.
The Poor Law Board.*	Any Commissioner of the Poor Law Board, or any Secretary or Assistant Secretary of the said Board.
The Board of Agriculture and Fisheries.	The President or any member of the Board, or the Secretary of the Board, or any person authorised by the President to act on behalf of the Secretary of the Board.

(b) Under the Documentary Evidence Act, 1882 (45 & 46 Vict., c. 9), this expression includes His Majesty's Stationery Office. The same Act extended the Doc. Evid. Act, 1868, to proclamations, &c., issued by the Lord Lieutenant of Ireland. The Act of 1896 (58 Vict., c. 9) extended the Act to any documents issued by the Board of Agriculture, now called the Board of Agriculture and Fisheries.

(c) A.A., ss. 163, 165.

* The functions of the Poor Law Board were transferred to the Local Government Board in 1871.

Ch. VI. Direct evidence is not better than indirect or circumstantial evidence, the difference between them being one not of *degree* but of *kind*.

Nature and strength of circumstantial evidence.

42. From the circumstances under which crimes are ordinarily committed, it follows that direct evidence of their commission is rarely obtainable, and that in the great majority of cases reliance must be placed on circumstantial evidence. Such evidence is in no way inferior to direct evidence, and is in some respects superior to it; for it has become a proverb that "facts cannot lie," whilst witnesses may. On the other hand, it must always be borne in mind that if facts cannot "lie," they may, and often do, deceive; in other words, that the interpretation which they appear to suggest is not that which ought to be placed upon them. Therefore, before the court finds an accused person guilty on circumstantial evidence, it must be satisfied not only that the circumstances are consistent with the accused having committed the act, but that they are inconsistent with any other rational conclusion than that the accused was the guilty person (*a*).

Illustrations of difference between good and bad circumstantial evidence.

43. The writer of a series of papers on the value and danger of circumstantial evidence, which appeared some years ago in a legal paper (*b*), states one of the leading rules with respect to this class of evidence as follows:—"The facts on which it is sought to found the inference of guilt must be visibly and evidently connected with the crime,"—and illustrates the rule by contrasting two groups of facts, of which the first would not, whilst the second would, constitute convincing circumstantial evidence of a crime. The characteristic difference between good and bad circumstantial evidence cannot be better explained than by quoting the passage which contains this illustration:—

"In one of the works on evidence there is an admirable example of a series of circumstances such as are intended to be excluded by this rule, which we take the liberty of epitomising;—

"1. The accused was a man of bad general character.

"2. He belonged to a nation characteristically regardless of human life.

"3. He narrowly escaped conviction on a charge of murder some years before.

"4. There is a strong ill-feeling between his nation and that of the deceased.

"5. He was heard to make exclamations in his sleep indicating a consciousness of having committed some terrible deed.

"6. The deceased was robbed, and the accused is proved to be notoriously greedy about money.

"It is scarcely necessary to say that, if a series of such circumstances were indefinitely accumulated, it would fail to produce in a sane mind a conviction that the accused was guilty. There is no visible *ligamen* between these facts and the facts sought to be established that the accused committed the murder, as all the facts are perfectly consistent with his innocence. Contrast such circumstances with such as ordinarily present themselves in strong cases of circumstantial evidence. Let us take, for instance, the following series of facts:—

"1. The deceased was found apparently murdered by a pistol bullet, which penetrated the skull.

(a) *Hodge's case*, 2 Lewin, C.C., 227.

(b) *Law Journal*, Oct. 11, 1879.

" 2. On the ground near the body was found a small fragment of a newspaper, which smelled strongly of burnt powder, and led to the supposition that it had been used in separating the powder from the ball; and on the accused being arrested there was found another piece of newspaper, which corresponded minutely at the point where it was torn with that found near the body of the deceased. Ch. VI.

" 3. In a pond near the scene of the murder was found a pistol, which had evidently been only recently thrown into the water, and into which the bullet fitted.

" 4. The pistol was proved to have belonged to a gentleman in the neighbourhood; but it also appeared that the prisoner was a servant in his employment, and that the pistol was missed the day before the murder from among several fowling pieces, pistols, powder flasks, and other articles connected with the paraphernalia of the sportsman which were arranged in a small room in the gentleman's house devoted to the purposes of sport. It was a part of the prisoner's duty to keep this room and its contents in order.

" 5. When asked whether he ever saw the pistol, he denied it.

" On the prisoner were found two bank notes, which were proved to have been given to the deceased in part payment for a horse sold by him to a neighbour.

" The first of these facts at once suggests suspicion against the accused. As the second and subsequent circumstances are disclosed, the suspicion becomes intensified; and, as the narrative goes on, the strong apparent connection between the facts and the crime rapidly culminates, until, even before the last of them is reached, the climax of moral certainty is attained, and the mind is forced to accept the conclusion that the accused was the perpetrator of the crime."

44. The rule which requires production of the best obtainable evidence does not require the strongest possible assurance; in other words, does not require the fullest proof of which the case will admit, nor the repetition of evidence beyond that which is sufficient to establish the fact. For instance, it is not necessary, in order to prove handwriting, to call the writer himself; nor, if a whole regiment should be present at some overt act of mutiny or insubordination, as the striking a commanding officer in front of his regiment, would the law require the production of all the persons present; for if one witness only were produced, and if, from his situation at the moment of the occurrence, he had as favourable an opportunity of observing what took place as any person present, his evidence would be complete, and not inferior in kind to any that could be produced.

Best evidence does not mean strongest possible assurance.

45. On the same principle the law admits as sufficient the testimony of one credible witness, subject to statutory exceptions in the case of treason and treason-felony; and to the exception that in a trial for perjury one witness alone is not sufficient, without some material and independent corroborative evidence in proof of the statement as to which the perjury is charged, because, otherwise, there is only the oath of one witness against the oath of the person accused. The evidence of a single accomplice is in law sufficient for a conviction, but such evidence must be received with extreme caution, and unless corroborated (see para. 85) should not be accepted as proof of a person's guilt. In a trial by court-martial, where the court performs the functions of both judge and jury, it may be laid down that no one should be convicted on the

Number of witnesses requisite.

Ch. VI. uncorroborated testimony of an accomplice. The corroboration required must not be merely as to the circumstances of the crime ; it must be corroborative of the guilt of the person charged.

II. Rule as to hearsay. 46. The rule as to best evidence says that second-best evidence shall not be produced if better evidence can be found. The rule as to hearsay goes a step further, and says that certain classes of second-best evidence shall not be produced under any circumstances. The term "hearsay" is primarily applicable to what a witness has heard another person say with respect to facts in dispute. But it is extended to all statements, whether reduced to writing or not, which are brought before the court, not by the authors of the statement, but by persons to whose knowledge the statements have been brought. The reasons for excluding such statements are, first, that they are not made on oath ; and, secondly, that the person to be affected by the statement has no opportunity of cross-examining its author. The rule has been often criticised on the ground that it sometimes excludes the only means of proof obtainable under the circumstances ; but its utility in excluding irresponsible proof is obvious (a). It is subject to various limitations or exceptions, the most important of which will be noticed below.

Form of rule as to hearsay in narrower sense.

47. The rule as to hearsay in its narrower sense may be stated as follows :—"No statements with reference to a person charged with an offence, relative to the charge, made in his absence can be received in evidence against him." This rule is subject to several exceptions : first, the admissibility of so-called "dying declarations" ; secondly, the admissibility of statements forming part of what is known by the name of the "*res gestæ*"—that is to say, of the fact, or set of facts, or transaction forming the subject of judicial inquiry ; thirdly, the admissibility of statements made by a deceased person against his pecuniary or proprietary interest ; and, fourthly, the admissibility of statements made by a deceased person in the strict course of duty.

Statement made in presence of accused not excluded.

48. It will be observed that the rule does not exclude evidence as to statements made in the presence of the accused (b), but it must be recollected that evidence of any such statement, although admissible as showing the conduct of the accused when he heard the statement, is not evidence that the statement was true ; e.g., evidence that A.B. said to the accused "you stole C's watch" is admissible to show the conduct of the accused on hearing that accusation, but is not evidence to prove that the accused did in fact steal the watch as alleged. If the conduct or statement of the accused when he heard the statement made in his presence was a mere blank denial or otherwise such as could not reasonably be construed as an admission, the court should reject the whole of the statement made in his presence, and pay no attention to it (c).

Dying declarations.

49. The first of the exceptions above referred to is that relating to dying declarations, which are admissible only in trials for murder or manslaughter. In such trials a declaration made by the person killed as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, is admissible as evidence, if it is proved that the declarant, at the time of making

(a) "Hearsay evidence, as a general rule, is not admissible, and it is not admissible because one knows to what extent people will be and are disposed to speak untruly, even without any motive whatever, and one knows what little importance can be attached to any rumour or anything stated as a mere hearsay."—James, L. J. in *Polani v. Gray*, L. R. 12 Ch. Div. at p. 425.

(b) As to confession of an accomplice made in the presence of the accused, see *para. 73*.

(c) *R. v. Norton*, 1910 2 K.B. 496.

the declaration, believed himself to be in actual danger of death, and had given up all hope of recovery. "Dying declarations," said Mr. Justice Byles (a), "ought to be admitted with scrupulous care. I had almost said with superstitious care. They have not necessarily the sanction of an oath; they are made in the absence of the prisoner; the person making them is not subject to cross-examination, and is in no peril of prosecution for perjury. There is also great danger of omissions and of misrepresentations, both by the declarant and the witness. To make a dying declaration admissible, there must be an expectation of impending and almost immediate death from the causes then operating. The authorities show that there must be no hope whatever."

50. The circumstances under which, in trials for murder, statements by the person alleged to have been murdered as to the cause of his death are and are not admissible as evidence against the accused, may be illustrated by the following cases:—

Dying declarations, illustration of rule.

(a.) At the time of making the statement the deceased had no hope of recovery, though his doctor had, and he lived ten days after making the statement. The statement was admitted as evidence (b).

(b.) The deceased, at the time of making the statement (which was written down), said something which was taken down thus: "I make the above statement with the fear of death before me, and with no hope of recovery." On the statement being read over, she corrected this to "with no hope at present of my recovery." She died thirteen hours afterwards. The statement was not admitted as evidence (c).

51. Passing to the second of the exceptions above referred to, the rule is, that where a statement is part of the *res gestæ* or transaction constituting the offence, then, whether it is or is not made in the presence of the accused, it is admissible as evidence against him. Words uttered during the continuance of the main action, whether by the active or by the passive party, though they cannot amount to acts for which the accused can be held responsible, yet may so qualify or explain the acts which they accompany, that they become essential for the due appreciation of them. Even where the accused is no longer present, if the words are the immediate and natural effect and consequence of continuing action on his part, though uttered out of his hearing, they may well be considered as part of the transaction.

Statement forming part of *res gestæ*.

52. There is no difficulty in understanding the general principle on which such statements are admitted, but there is sometimes great practical difficulty in determining how long the "transaction" ought to be considered as continuing, and what ought to be treated as "the immediate and natural effect of continuing action." Thus in a case (d), which has been the subject of much discussion, the facts appear to have been as follows:—A man is knocked down by a passing cab, and afterwards dies from the injuries thereby occasioned. Just after the accident, the prisoner, the driver of the cab, being then out of sight and out of hearing, a person who had not witnessed what had occurred comes up, and inquires into the matter, and the deceased makes a statement to him. The statement was admitted

Statement forming part of *res gestæ*; illustration of rule.

(a) *R. v. Jenkins*, L. R. 1 C. C. R. at p. 193.

(b) *R. v. Masley*, 1 Moo. C. C. 97. This and the next case are cited as illustration by Stephen, Dig. Ev., art. 26.

(c) *R. v. Jenkins*, L. R. 1 C. C. R. 187.

(d) *E. v. Foster*, 6 O. and P. 326.

Ch. VI. as evidence, though it did not come within the rule as to dying declarations, but the propriety of its admission has been much questioned.

Special rule in case of trials for rape and kindred offences.

53. In trials for rape, and kindred offences against women and girls, evidence is allowed to be given as to the fact that, shortly after the commission of the offence, the person against whom the offence was committed made a complaint about it, and as to the particular terms of the complaint so far as they relate to the charge. This is admissible for the purpose of showing that the conduct of the person against whom the offence was committed was consistent with the story told by her in the witness box (a).

Statements as to bodily or mental feeling admissible.

54. When it is intended to prove the state of health of a person at a particular time, evidence may be given of expressions indicative of that state used by him at that time (b). Thus, in the Rugeley poisoning case, statements made by the deceased before his illness as to his state of health, and during his illness as to his symptoms, were admitted as evidence against the accused.

Declaration of deceased person against interest.

55. Thirdly, a declaration, written or oral, made by a person since deceased against his pecuniary or proprietary interest is admissible (c). If it is admitted, the whole of the statement of which it forms part becomes admissible. The expressions "pecuniary or proprietary" must be strictly construed, and a declaration is not "against interest" within the meaning of the rule because, e.g., it would have tended to show that he had committed a crime.

Statements made in course of business by person since deceased.

56. Fourthly a statement, written or oral, or an entry, which it is the duty of a person to make in the ordinary course of his business or professional employment, is admissible as evidence after his death, provided it is made contemporaneously with the act to which it relates. But it is only admissible to prove those facts which it was the duty of the person making the statement or entry to include in it, and of which he had personal knowledge. Thus, where on a trial for murder it appeared that the deceased, a constable, had, in the course of his duty, made, shortly before his death, a verbal statement to his superior officer as to where he was going, and what he was going to do, it was held that this statement, which was to the effect that the deceased was going to watch the accused, was admissible (d).

Admissibility of deposition.

57. It may sometimes happen that a material witness, who has given evidence at the preliminary inquiry, cannot attend at the trial. In proceedings before a civil court for indictable offences, provision is made for such cases by a statute (e) which enacts that the deposition may be read as evidence, on proof that the witness is dead, or so ill as not to be able to travel, that the deposition was taken in the presence of the accused person, that the accused then had a full opportunity of cross-examining the deponent, and further, on *prima facie* evidence that the deposition is signed by the justice by or before whom it purports to be taken. This provision would be applicable where such depositions are required by a court-martial on a trial for an offence under s. 41 of the Army Act.

(a) *R. v. Osborne*, L.R. [1905] 1 K.B. 551.

(b) Stephen, Dig. Ev., art. 11.

(c) Stephen, Dig. Ev., art. 28.

(d) See Stephen, Dig. Ev., art. 27. Under 42 & 43 Vict., c. 11, where an entry is made in an ordinary banker's book in the usual and ordinary course of business, a copy of the entry is evidence of the entry and of the matters therein recorded.

(e) 11 & 12 Vict., c. 42, s. 17. See also Stephen, Dig. Ev., arts. 140, 141, and 30 & 3a Vict. c. 35, s. 6.

58. There is no provision making the summary of evidence taken before a commanding officer, when an accused person is remanded for trial by court-martial, evidence under the same circumstances as depositions taken before magistrates. Accordingly, the summary cannot be admitted as evidence of the facts recorded by it except where the accused has pleaded guilty (a). But where a statement recorded in the summary of evidence is put in issue before a court-martial, as, for example, where a discrepancy is alleged between the statement made in the summary and the evidence given before a court-martial; or where the alleged wilful falsehood of such a statement becomes the occasion of a trial by a court-martial, the summary, if purporting to give the *verbatim* statement of the witness, may be given in evidence as confirmatory of the statement having been made.

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Summary of evidence, how far admissible.

59. The rule excluding hearsay evidence is, as has been seen, applicable to written or documentary, as well as to oral evidence. The statement of a person who is not called as a witness is none the less "hearsay" because it has been reduced to writing, and is offered in that form to the court. But in its application to documents of a public or official character, the rule is subject to very important qualifications. In the case of many such documents, the statements which they contain are, either under the general law, or under express statutory provisions, admissible as evidence to the matters to which they relate.

Application of hearsay rule to documentary evidence.

60. Thus, by the general law, a statement of any fact of a public nature, if made in any recital in a public Act of Parliament, or in any Royal proclamation, or speech in opening Parliament, or in any address to the Crown of either House of Parliament, is admissible as evidence of that fact.

Recitals of public facts or statements, proclamations, &c.

61. So also an entry in any record, official book, or register kept in the British dominions, or at sea, or in a foreign country, made in proper time by any person in the discharge of any duty imposed on him by law, is admissible as evidence of the facts to which it relates.

Entry in public record made in performance of duty.

62. And, under the special provisions of the Army Act, attestation papers, letters, returns, and documents respecting service, army lists, gazettes, warrants, and orders made in pursuance of the Act, records in regimental books, descriptive returns, and certificates of conviction or acquittal, are made evidence of the facts stated by them (b).

Special provisions of Army Act.

63. The general rule is that the opinion or belief of a witness is not evidence. A witness must depose to the particular facts which he has seen, heard, or otherwise observed, and it is for the court to draw the necessary inference from these facts. Thus a witness may not on a trial for desertion characterise the absence of the accused as "desertion." This is a matter of inference, and is the

IV. Rule as to opinion.

(a) See R.P. 37.

(b) See A.A. 163-165. Note the distinction between the provision making the copy evidence of the original, as an exception from the rule as to best evidence (e.g., s. 163 (1) (c)), as to copies of the King's Regulations, Royal Warrants, &c.), and the provisions which make the document, as an exception from the rule as to hearsay, evidence of the facts to which it relates; also the distinction between a document being evidence of certain facts and (as a letter or record) evidence of the statement of those facts by some person.

The statements in the text, particularly in para. 59, as to the admission of documents, do not exclude the admission in evidence of documents which are part of the *res gestæ*. If, e.g., a person is charged with embezzlement, the books which it was his duty to keep are admissible in evidence as part of the transaction under investigation, and the entries made by him or under his authority in those books will be evidence against him, as part of his conduct in relation to that transaction, and as raising presumptions which he must explain.

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point which it rests with the court to determine according to the evidence. The examination of the witness should be confined to the fact of the accused absenting himself, and to such other facts relevant to the charge as may be within the *knowledge* of the witness.

Exception
in case of
experts.

64. The chief exception to this rule relates to the evidence of experts. The opinion of an expert, that is to say, a person specially skilled in any science or art, is admissible as evidence on any point within the range of his special knowledge.

Medical
experts.

65. Thus, in a poisoning case, a doctor may be asked as an expert whether, in his opinion, a particular poison produces particular symptoms. And, where lunacy is set up as a defence, an expert may be asked whether, in his opinion, the symptoms proved to be exhibited by the alleged lunatic commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of their acts, or of knowing that what they do is either wrong or contrary to law (a).

Experts in
military
science.

66. An officer may be asked, as an expert, to give his opinion on a point within his special military knowledge, but to make his opinion admissible his knowledge must be of a kind not possessed by the court generally. Thus, in a trial before a court-martial it is not proper to ask a witness for an opinion depending on military science generally, though it may be perfectly proper to put questions involving opinion, to an engineer as to the progress of an attack, or to an artillery officer as to the probable effect of his arm, if directed as assumed; since these matters, though having reference to military science, are not of such a nature as to be presumably known to each member of a court-martial.

Experts in
hand-
writing.

67. With respect to handwriting, it has been specially provided by statute (b) that comparison of a disputed handwriting with any writing, proved to the satisfaction of the court to be genuine, is permitted to be made by witnesses, and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness, or otherwise, of the writing in dispute. It must, however, be borne in mind that writing made for the special purpose of comparison is not unlikely to be disguised. The comparison may be made either by a person acquainted with the handwriting, or by an expert in handwriting, or by the court itself. A witness may be required to read writing or to write in the presence of the court.

Rule
excluding
opinion
does not
exclude
evidence as
to belief.

68. The rule which requires a witness to state what he knows, and not what he thinks, does not require him to depose to facts with an expression of certainty that excludes all doubt in his mind. For example, it is the constant practice to receive in evidence a witness's belief of the identity of a person or thing, or of the fact of a certain handwriting being the handwriting of a particular person, though he will not swear positively to those facts. It has been decided that a witness who falsely swears that he "thinks" or "believes," may be convicted of perjury equally with the man who swears positively to that which he knows to be untrue.

Opinion as
to conduct,
how far
admissible.

69. In cases affecting the conduct of the accused, either as to deportment or language, it is not only proper, but often necessary to require a witness to declare his opinion, because that opinion

(a) See Stephen, Dig. Ev., art. 49, and cases there cited as illustrations.

(b) 28 & 29 Vict., c. 18, s. 8. Provided the witness is *in fact* skilled in the comparison of handwriting, it is immaterial that he is not a professional expert and immaterial how he acquired his skill. *R. v. Silverlock* [1894] 2 Q.B. 766.

may be derived from the impression of a combination of circumstances, occurring at the time referred to, difficult, if not impossible, fully to impart to the court. But it would be manifestly improper to draw the attention of a witness to facts, whether derived from his own testimony or from that of another witness, and to ask his opinion as to their accordance with military discipline or usage because the court, being in possession of facts, are the only proper judges of their tendency. If the witness is asked a question the tendency of which is to make him express his opinion as to the general conduct of the person accused, or to give his judgment on the whole matter of the charge, he may, and should, decline to answer it.

70. A witness may not read his evidence or refer to notes of evidence already given by him, but he may while under examination refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the court consider it likely that the transaction was at that time fresh in his memory. The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid if, when he read it, he knew it to be correct. Any writing so referred to must be produced and shown to the adverse party if he requires it, and that party may, if he pleases, cross-examine the witness upon it. Refreshing memory.

71. But a witness who refreshes his memory by reference to a writing must always swear positively as to the fact, or that he has a perfect recollection that the fact was truly stated in the memorandum or entry at the time it was written. If on referring to a memorandum not made by himself he can neither recollect the fact nor recall his conviction as to the truth of the account or writing when the facts were fresh in his memory, so that he cannot speak as to the fact further than as finding it noted in a written entry, his testimony is objectionable, as hearsay. Notes referred to not evidence of themselves.

(v.) Admissions and Confessions.

72. In criminal proceedings admissions by the accused matters relating to an alleged offence as distinguished from actual confession of the offence itself are, strictly speaking, not receivable as evidence (a). It is, however, the practice of courts-martial to receive admissions made in open court as to collateral or comparatively unimportant facts, not involving criminal intent, which are not in dispute, but must be proved on the part either of the prosecution or of the defence. Thus, it is the practice to allow either party the option of admitting the authenticity of orders or letters, or the signature of a document, or the truth of a copy, put in by the other party, in cases where such writings are receivable when proved; or that certain details in an enumeration of stores, or in an account, are correctly stated; or that a promise or permission to a certain effect, or to a certain order, was actually given, or that a certain letter was sent or received on a given day; and so in similar cases where admissions may expedite the proceedings and do not go to the merits of the matter before the court. Rule as to admissions.

(a) This does not extend to acts done or things said by the accused as part of the *res geste*, which, until explained by him, raise a presumption of guilt; as, for instance, if he has charged himself in a book of account which it was his duty to keep with a sum of money, the book may be an admission that he received the money, and on proof that he made the entry, is admissible in evidence against him. A letter by a person charged with an offence apologising for the offence would ordinarily be a confession, but a letter admitting some of the facts alleged, but explaining them so as to show that there was no criminality in them, would ordinarily not amount to a confession.

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Confession
admissible
only against
person who
makes it.

73. The general rule is, that a confession is not admissible as evidence against any person except the person who makes it (a). But if one prisoner makes a confession in the presence of another, who thereupon makes statements which are properly construable as admissions by him, the confession of the first will be admissible against the second, not as evidence of the facts which it states, but as introductory to and explanatory of the admissions of the second.

Confession
must be
voluntary.

74. Before a confession can be received in evidence, it must be proved affirmatively that the confession was free and voluntary; and therefore the prosecutor must always prove the circumstances under which it was made.

Confession
when not
deemed
voluntary.

75. A confession is not deemed to be voluntary, if it appears to the court to have been caused by any inducement, threat, or promise proceeding from a magistrate or other person in authority or concerned in the charge (*e.g.*, the prosecutor or the person having the custody of the accused), and having reference to the charge against the accused person, whether addressed to him directly or brought to his knowledge indirectly, and if, in the opinion of the court, the inducement, threat, or promise gave the accused person reasonable grounds for supposing that by making a confession he would gain some advantage or avoid some evil in reference to the proceedings against him. Thus, on a trial of A for murdering B, a handbill issued by the Secretary of State, promising a reward and pardon to any accomplice who would confess, was brought to the knowledge of A, who, under the influence of a hope of pardon, made a confession. It was held that the confession was not voluntary (b).

Confession
when
deemed
voluntary.

76. But a confession is not involuntary merely because it appears to have been caused by the exhortations of a person in authority to make it as a matter of religious duty, or by an inducement collateral to the proceedings, or by inducements held out by a person having nothing to do with the apprehension, prosecution, or examination of the accused. Thus, A being charged with the murder of B, the chaplain of the gaol read the Communion Service to A, and exhorted him on religious grounds to confess his sins. A in consequence made a confession, and it was held that this confession was voluntary (c). So, again, a confession made by a prisoner to a gaoler in consequence of a promise by the gaoler that if the prisoner confessed he should be allowed to see his wife, would be admissible in evidence. In short, to make a confession involuntary, the inducement must have reference to the escape of the accused from the criminal charge against him, and must be made by some person having power to relieve him, wholly or partially, from the consequences of that charge.

Confession
made after
removal of
impression
produced by
threat, &c.,
deemed
voluntary.

77. A confession is deemed to be voluntary if, in the opinion of the court, it is shown to have been made after the complete removal of the impression produced by any inducement, threat, or promise which would otherwise render it involuntary. Thus, A is accused of the murder of B, and C, a magistrate, tries to induce A to confess by promising to try to get him a pardon if he does so. The Secretary of State informs C that no pardon can be granted,

(a) Stephen, Dig. Ev., art. 21. As to when the statement of one mutineer or conspirator is admissible against another, see above, para. 28, *et seq.*

(b) *R. v. Boswell, Car. and Marsh.* 584, cited as an illustration by Stephen Dig. Ev., art. 22. *R. v. Thompson* [1893] 2 Q.B., 12.

(c) *R. v. Gilham*, 1 Moo. C. C., 186, cited by Stephen, Dig. Ev., art. 22.

and this is communicated to A. After this A makes a statement. **Oh. VI.**
This is a voluntary confession (a).

78. Facts discovered in consequence of a confession improperly obtained, and so much of the confession as distinctly relates to those facts may be proved. Thus, A, accused of burglary, makes a confession to a policeman under an inducement which prevents it from being voluntary. Part of it is that A had thrown a lantern into a certain pond; the fact that he said so, and that the lantern was found in the pond in consequence, may be proved (b).

Facts discovered through involuntary confession admissible.

79. It is, of course, improper to endeavour to extort a confession by fraud or under the promise of secrecy; but if a confession is otherwise admissible as evidence, it does not become inadmissible *merely* because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions whether put by a magistrate, officer, or private person, or because he was not warned that he was not bound to make the confession, and that evidence of it might be given against him.

Confession made under promise of secrecy, &c.

80. If a confession is given in evidence, the whole of it must be given, and not merely the parts disadvantageous to the accused person.

Whole of confession must be given.

81. Evidence amounting to a confession may be used as such against the person who gives it, though it was given on oath and though the proceeding in which it was given had reference to the same subject-matter as the proceeding in which it is to be used, and though the witness might have refused to answer the questions put to him; but if, after refusing to answer such questions, the witness is improperly compelled to answer, his answers are not a voluntary confession (c). Thus A was charged with maliciously wounding B. Before the magistrates, A had appeared as a witness for C, who was charged with the same offence. A's deposition was allowed to be used against him on his own trial (d). The same rule would appear to apply to statements made by a soldier charged before his commanding officer; but the proceedings of a court of inquiry, or any confession or statement made at a court of inquiry, cannot be used as evidence against an officer or soldier before a court-martial, unless the court-martial is one for the trial of an officer or soldier for wilfully giving false evidence before the court of inquiry (e).

Confession made on oath or in previous proceedings.

(vi.) Who may give Evidence.

82. As a general rule, every person is a competent witness. Formerly persons were disqualified by crime or interest, or by being parties to the proceedings, but these disqualifications have now been removed by statute (f), and the circumstances which formerly created them do not affect the competency, though they may often affect the credibility, of a witness.

General rule as to competency of witnesses.

83. Under the general law as it stood before the Act of 1898 came into force a person charged with an offence was not competent to give evidence on his own behalf, but many exceptions

Competency of person charged.

(a) Stephen, Dig. Ev., art. 22, *R. v. Cleaves*, 4 C. and P., 221.

(b) Stephen, Dig. Ev., art. 22, *R. v. Gould*, 9 C. and P., 364.

(c) Stephen, Dig. Ev., art. 23.

(d) *R. v. Chidley and Cummins*, 8 Cox, Crim. Ca., 365.

(e) R.P. 124 (L).

(f) Lord Denman's Act, 6 & 7 Vict., c. 85; Lord Brougham's Act, 14 & 15 Vict., c. 99; Criminal Evidence Act, 1898, 61 and 62 Vict., c. 36. The last-mentioned Act, by s. 6, is not to apply to courts-martial till so applied by Rules of Procedure. It has so applied since the 16th January, 1899. See R.P. 73 (B).

Ch. VI. had been made to this rule by legislation, and the rule itself was finally abolished by the Criminal Evidence Act, 1898. Under the present law a person charged is a competent witness, but—

- (i.) He can only give evidence for the defence ; and,
- (ii.) He can only give evidence if he himself applies to do so.

Rule as to
persons
jointly
charged.

84. Under the law as it stood before 1898 persons jointly charged and being tried together were not competent to give evidence either for or against each other. Under the present law a person charged jointly with another is a competent witness, but only for the defence and not for the prosecution. If, therefore, one person charged applies to give evidence his cross-examination must not be conducted with a view to establish the guilt of the other.

If, therefore, it is thought desirable to use against one accused person the evidence of another who is being tried with him, the latter should be released, or a separate verdict of not guilty taken against him. An accused person so giving evidence is popularly said to turn King's evidence. If an accused person thinks that the evidence of one or more of the other persons proposed to be conjointly arraigned with him will be material to his defence, he should claim a separate trial (a).

Evidence
of accomplices.

85. It follows from what has been stated that the evidence of an accomplice is admissible against his principal, and *vice versa*, subject, if they are tried together, to what has been stated in the preceding paragraph. The evidence of an accomplice should always be received with great jealousy and caution. A conviction on the unsupported testimony of an accomplice may, in some cases, be strictly legal, but it is the practice to require it to be confirmed by unimpeachable testimony in some material part, and more especially as to his identification of the person or persons against whom his evidence may be received.

Competency of
wife.

86. The wife of a person charged is now a competent witness, but, except in certain special cases—

- (i.) She can only give evidence for the defence ; and,
- (ii.) She can only give evidence if her husband applies that she should do so.

The special cases in which a wife can be called as a witness either for the prosecution or for the defence, and without the consent of the person charged, are where the accused is charged with an offence under the following enactments:—Sections 48, 52–55 of the Offences against the Person Act, 1861 (24 & 25 Vict., c. 100); Sections 12 and 16 of the Married Women's Property Act, 1882 (45 & 46 Vict., c. 75); the Criminal Law Amendment Act, 1885 (48 & 49 Vict., c. 69); the Vagrancy Act, 1898 (61 & 62 Vict., c. 39); the Immoral Traffic (Scotland) Act, 1902 (2 Edw. 7, c. 11); the Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15); the Children Act, 1908 (8 Edw. 7, c. 67, Part II); the Criminal Law Amendment Act, 1912 (2 & 3 Geo. 5, c. 20), s. 7. The same rule applies in cases in which the wife is by common law a competent witness against her husband, *i.e.*, where the proceeding is against the husband for bodily injury or violence inflicted on his wife. The rule of exclusion extends only to a lawful wife. There is no ground for supposing that the wife of a prosecutor is an incompetent witness.

(a) See R.P. 15.

87. A witness is incompetent if, in the opinion of the court, he is prevented by extreme youth (a), disease affecting his mind, or any other cause of the same kind, from recollecting the matter on which he is to testify, from understanding the questions put to him, from giving rational answers to those questions, or from knowing that he ought to speak the truth (b). Ch. VI.
Incompetency from
idiotcy, &c.

88. A witness unable to speak or hear is not incompetent, but may give his evidence by writing or by signs, or in any other manner in which he can make it intelligible, but such writing must be written and such signs made in open court. Evidence so given is deemed to be oral evidence (b). Deaf and
dumb persons not
incompetent.

89. The particular form of the religious belief of a witness, or his want of religious belief, does not affect his competency. If he takes an oath he may take it with such ceremonies and in such manner as makes it binding on his conscience (c). If he objects to take an oath on the ground that he has no religious belief, or that taking an oath is contrary to his religious belief, he may make a solemn affirmation (d). Religious
belief
immaterial
as to com-
petency.

90. A member of a court-martial is a competent witness in favour of the accused, and might, as such, be sworn to give evidence at any stage of the proceedings; but the Army Act and Rules of Procedure direct that a witness for the prosecution shall not sit on a court-martial for the trial of any person against whom he is a witness (e). A member of the court must not communicate privately to other members of the court any special knowledge which he has, or thinks that he has, of the guilt or innocence of the accused, or act on private grounds of belief. If he wishes to give evidence, he must be sworn as other witnesses and be subject to cross-examination. Compe-
tency of
member of
court to
give
evidence.

91. It will be seen that the effect of the successive enactments which have gradually removed the disqualifications attaching to various classes of witnesses has been to draw a distinction between the competency of a witness and his credibility. No person is disqualified on moral or religious grounds, but his character may be such as to throw grave doubts on the value of his evidence. No relationship, except to a limited extent that of husband and wife, excludes from giving evidence. The parent may be examined on the trial of the child, the child on that of the parent, master for or against servant, and servant for or against master. The relationship of the witness to the prosecutor or the accused in such cases may affect the credibility of the witness, but does not exclude his evidence. Distinction
between
competency
and credi-
bility.

(vii.) Privilege of Witnesses.

92. It by no means follows that, because a person is competent to give evidence, he is therefore compellable to do so. There are many cases in which a witness before a civil court may decline to answer a question or produce a document, and the like privileges are expressly extended by statute to witnesses before courts-martial (f). Person com-
petent not
always com-
pellable to
give evi-
dence.

(a) By the Criminal Law Amendment Act, 1885 (48 & 49 Vict., c. 69, s. 4), and the Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15, s. 15), and the Children Act, 1908 (8 Edw. 7, c. 67, s. 30), special provision is made for the reception of the unsworn evidence of a child in the case of certain offences against girls and children.

(b) Stephen, Dig. Ev., art. 107.

(c) R.P. 30, §2 (C); and see 1 & 2 Vict., c. 105.

(d) 51 & 52 Vict., c. 46; A.A. 52 (4), R.P. 82. See also Oaths Act, 1909 (9 Edw. 7, c. 30).

(e) A.A. 50 (3), R.P. 19 (B) (H) and 106 (D).

(f) See A.A. 128, and R.P. 73 (B).

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Witness not to be compelled to criminate himself.

93. No one, except the accused himself when giving evidence on his own application, and as to the offence wherewith he is charged, is bound to answer a question if the answer would, in the opinion of the court, have a tendency to expose the witness, or the wife or husband of the witness, to any criminal charge, penalty, or forfeiture, which the court regards as reasonably likely to be preferred or sued for, or to any military punishment. Accordingly, an accomplice cannot be examined without his consent, but if an accomplice who has come forward to give evidence on a promise of pardon, or favourable consideration, refuses to give full and fair information, he renders himself liable to be convicted on his own confession. However, even accomplices in such circumstances are not required to answer on their cross-examination as to other offences.

Rules as to accused giving evidence.

93A. Where the accused offers himself as a witness he may be asked any question in cross-examination, notwithstanding that it would tend to criminate him as to the offence charged. But he may not be asked, and if he is asked must not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any other offence, or is of bad character, unless—

- (i.) The proof that he has committed or been convicted of the other offence is admissible evidence to show that he is guilty of the offence with which he is then charged; or,
- (ii.) He has personally or by his advocate asked questions of the witnesses for the prosecution, with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or,
- (iii.) He has given evidence against any other person charged with the same offence (a).

He may not be asked questions tending to criminate his wife. Evidence tending to show that the accused has been guilty of criminal acts other than those covered by the charge is not admissible, except in three cases—(1) Where the prosecution seeks to prove a system or course of conduct. (2) Where the prosecution seeks to rebut a suggestion on the part of the prisoner of accident or mistake. (3) Where the prosecution seeks to prove knowledge by the prisoner of some fact. And in all cases, such evidence is never admitted as proof that the prisoner did the act charged, but only as showing the quality of that act and the guilty (b) intention of the prisoner.

Privilege does not extend to answers showing civil liability.

94. The privilege as to criminating answers does not cover answers merely tending to establish a civil liability. No one is excused from answering a question or producing a document only because the answer or document may establish or tend to establish that he owes a debt, or is otherwise liable to any civil suit, either at the instance of the crown or of any other person (c).

When privilege may be waived by witness.

95. The privilege of not answering for the above reasons is the privilege of the witness, and therefore he may waive it, and if he chooses to answer, his answer must be received in evidence, but the privilege mentioned in the following paragraph is for the protection of other parties, and cannot be waived except with their consent.

(a) See R.P. 80.

(b) See Judgment of *Bray, J. in Rex v. Bond* [1906] 2, K.B. 289.

(c) 46 Geo. III, c. 37.

96. Another class of privilege is based on considerations of public policy. No one can be compelled to give evidence relating to any affairs of State, or as to official communications between public officers upon public affairs, except with the permission of the officer at the head of the department concerned.

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Evidence as to affairs of State.

97. On this principle, a confidential report, or letter, or official information of a confidential character, although it may refer to matters which a court-martial may have decided to be relevant to the inquiry before it, cannot be produced or disclosed except by consent of the superior authority; and this consent is refused if the production or disclosure is considered detrimental to the public service. Proof of the refusal should be laid before the court by the examination of a witness, or by a written communication, read in open court, and attached to the proceedings.

Privilege as to confidential reports and information.

98. So also, the proceedings of a court of inquiry cannot be called for by courts-martial, nor witnesses examined as to their contents; nor is any confession or statement made at a court of inquiry admissible against an officer or soldier before a court-martial. The only exception to this rule is in the case of a court-martial held for the trial of an officer or soldier for wilfully giving false evidence before the court of inquiry (a).

Privilege as to proceedings of court of inquiry.

99. Again, in cases in which the Government is immediately concerned, no witness can be compelled to answer any question the answer to which would tend to discover the names of persons by or to whom information was given as to the commission of offences. It is, as a rule, for the court to decide whether the permission of any such question would or would not, under the circumstances of the particular case, be injurious to the administration of justice (b).

Information as to commission of offences.

100. A husband is not compellable to disclose any communication made to him by his wife during the marriage; and a wife is not compellable to disclose any communication made to her by her husband during the marriage (c).

Communications during marriage.

101. A legal adviser is not permitted, whether during or after the termination of his employment as such, unless with his client's express consent, to disclose any communication, oral or documentary, made to him as such legal adviser, by or on behalf of his client, during, in the course of, and for the purpose of his employment, or to disclose any advice given by him to his client during, in the course of, and for the purpose of such employment. But this protection does not extend to:—

Professional communications.

1. Any such communication if made in furtherance of any criminal purpose;
2. Any fact with which the legal adviser became acquainted otherwise than in his character as such.

The expression "legal adviser" includes barristers and solicitors, their clerks, and interpreters between them and their clients, and the person assisting the accused during trial before a court-martial (d).

102. Medical men and clergymen are not privileged from the disclosure of communications made to them in professional confidence, but it is not usual to press for the disclosures of communications made to clergymen.

Doctors and clergymen not privileged.

(a) See also para. 81 above, and R.P. 124 (L).

(b) Stephen, Dig. Ev., art. 113.

(c) 16 & 17 Vict., c. 83, s. 3; 61 & 62 Vict., c. 36, s. 1 (d); and R.P., (4).

(d) Stephen, Dig. Ev., art. 115.

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Questions to be entered on proceedings whether answered or not.

103. The questions, whether answered or not, should be entered on the proceedings. When the witness claims the privilege of not answering, it is for the court to decide whether the question is within any of the exceptions. Courts-martial may also in their discretion interpose by informing a witness, at the time when a question is put to him, that he is not bound to answer. Any such interposition, and any claim of privilege by the witness, and the fact whether the witness is required to answer or not, should be noted on the proceedings.

(viii.) *How evidence is to be given.*

Mode of giving evidence dealt with by Rules.

Points requiring attention of court.

104. The mode in which evidence is to be given before courts-martial is fully dealt with in the Rules of Procedure, to which the following paragraphs must be taken as supplemental.

105. It will be the duty of the court in every case to see that the rules of evidence are strictly conformed to. The following points will require special attention in relation to any evidence that may be tendered :—

- (a) That it is relevant to the issue.
- (b) That it is the best evidence procurable.
- (c) That it is not within the rule rejecting hearsay evidence.
- (d) That (except in the case of experts) it is not a mere expression of opinion.
- (e) That if it is a confession or admission, it is legally admissible.
- (f) That if it is a document, it is legally admissible and properly put in evidence (a).
- (g) That no document or other thing is used for the purposes of the trial which has not been properly put in (b).
- (h) That any witnesses called are legally competent to give evidence.
- (i) That any document with which a witness proposes to refresh his memory is legally admissible for the purpose.
- (k) That the examination of witnesses is fairly and properly conducted.

Examination of witnesses.

106. This last point requires a little more detailed notice. The examination of a witness by the person who calls him is called his examination, or direct examination, or examination-in-chief ; and on this examination the question must be relevant to the issue, that is to say, must relate to the matters in issue at the trial. The court must, of course, in all cases see that a witness is not compelled to answer any question in respect of which he is entitled to claim privilege ; and must also see that, as far as possible, a witness is so dealt with that his honest belief is obtained from him.

Leading questions.

107. Accordingly a witness must not be asked in examination-in-chief leading questions on any material point, that is to say, questions suggesting the answer which the person putting the question wishes or expects to receive, or suggesting disputed facts, as to which the witness is to testify. For instance, a witness must not be asked, "Did the accused then go into the barrack-room?" but "What did the accused do next?" If it were not for this

(a) A document is said to be "put in" when it is produced to the court, and, unless verification by a witness is unnecessary (para. 38), properly verified.

(b) This must, however, be taken subject to the qualification that for purposes of identification, &c., any document or thing may be shown to a witness before it has been formally proved and put in. See para. 110.

rule a favourable and dishonest witness might be made to give any evidence that is desired. On the other hand, it would be mere waste of time to enforce the rule where the questions asked are simply introductory and form no part of the real substance of the inquiry, or where they relate to matters which, though material are not disputed. But where a question relates to a contested point, which is either directly conclusive of the matter in issue, or directly and proximately connected with it, the rule should nearly always be strictly enforced, and no question should be allowed in a form which directly or indirectly suggests to the witness the answer desired, or which, embodying a material fact, admits of a conclusive answer by a simple "Yes" or "No."

108. Care must, however, be taken in enforcing this rule not to exclude questions which do not really suggest an answer, but merely direct the attention of the witness to the subject as to which he is questioned. It is often, indeed, extremely difficult in practice to determine whether or not a question is in a leading form, and in all such cases the real test should be whether or not the examination is being conducted fairly and with the object of eliciting the honest belief of the witness. Test of what are leading questions.

109. The following may be taken as examples of fair and unfair examination of a witness. Suppose a man to be charged with the murder of another by stabbing, the body having been found at the upper end of a certain street, and a witness to be called to speak to the circumstances in which the blow was struck. There would be no objection to ask the witness— Examples of fair and unfair questions.

If he remembered the 12th August, and—

If he was in North Street about noon on that day.

These questions, though in a leading form, are merely introductory, and if the defence of the accused was that he had struck the blow, but that he had done it in self defence, there would be no objection to going a little further and asking—

Whether he saw the deceased and the accused there?

But from this point all leading questions should be avoided, and the examination should be continued in some such form as this :

In what part of the street were the accused and deceased when you first saw them?

How far were you from the accused and the deceased?

Tell us in your own words exactly what passed.

To ask, instead of the first question—

Were they at the upper end of the street when you first saw them?

would be highly improper, as it might be very important in considering whether or not there had been a long quarrel or scuffle, to know whether they had moved far from the place where the witness first saw them to the place where the body was found. It would obviously be still more improper to ask,

Did you see the accused go up stealthily behind the deceased and strike him a blow with a knife?

or any question of that character.

If, on the other hand, the defence set up were an *alibi*, it would be improper to ask directly after the introductory questions—

Whether the witness saw the deceased and the accused there?

The questions in that event should rather be—

Whether he saw anyone there?

Whether he could identify them?

(M.L.)

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Whether he can identify anyone in court as having been present?

though, finally, if an answer could not be got in any other way, the attention of the witness might be called to the accused, and he might be distinctly asked,

"Whether he saw that person there?"

But this should not be done until the witness had said that he saw some persons there, and that he would know them again.

Rule as to directing attention to particular persons and things.

110. The rule in these cases is, that the attention of a witness who has alluded to any person or thing, may be called to a particular person or thing for the purpose of identification, and that the witness may be asked directly whether that is the person or thing to which he alluded; but in practice this should only be done after examination in the ordinary way has failed to elicit any distinct replies. When any article, such as a stick, belt, or document, is produced in court for the purpose of identification, the witness may be asked such questions as "Whether he recognises it," and "Whether he saw anything done with it, or to it;" but such a question as "Whether he saw A strike B with the stick or belt," or "Whether he saw A make an alteration in the document," should not be admitted.

Exceptions in case of hostile witness.

111. Of course, if a person calls a witness and the witness appears to be directly hostile to him, or interested on the other side, or unwilling to give evidence, the reason of the rule fails, and the court should allow the person calling the witness not only to ask him leading questions, but to cross-examine him, and to treat him in every respect as though he were a witness called by the other side, except that as he had been put forward as worthy of credit, by the person calling him, that person must not be permitted, either by cross-examination or by direct evidence, to impeach his credit by general evidence of bad character (a).

Rules as to cross-examination.

112. When the examination-in-chief is finished the opposite party cross-examines the witness. In cross-examination leading questions and questions not directly bearing on the issue may be put, and must be answered, as the cross-examining party is entitled to test the examination-in-chief by every means in his power; and questions are often put in cross-examination for the sole purpose of putting a witness who is supposed to have learnt up the story, off his guard. Questions also may be put on cross-examination which tend either to test the accuracy or credibility of the witness or to shake his credit, impeaching his motives or injuring his character; though such questions cannot be put on the examination-in-chief or re-examination.

Further observations on cross-examination.

113. Nevertheless, questions should not be allowed which assume that facts have been proved which have not been proved, or that answers have been given contrary to the fact. Nor, though questions not directly bearing on the issue may be asked, should a witness be pressed in cross-examination as to any facts, which, if admitted, would not affect the matter at issue or the credit of the witness. And if the person cross-examining intends to adduce evidence contradicting the evidence given by the witness, he should be required to put to the witness in cross-examination the substance of the evidence which he proposes to adduce, in order to give him an opportunity of retracting or explaining.

Further observations on cross-examination.

114. When a witness is under cross-examination he may be asked any questions which tend to test his accuracy, veracity, or credi-

bility, or (except in the case of a witness originally called by the person cross-examining him) to shake his credit by injuring his character. But a witness may of course decline to answer a question as to which he is entitled to claim privilege, and the right of asking questions tending merely to discredit, a right which has sometimes been seriously abused in civil courts, is qualified in the case of trials before courts-martial by Rule 92 of the Rules of Procedure.

115. Evidence cannot be given to contradict the answer of any witness to a question which only tends to shake his credit by injuring his character, except :—

Exclusion of evidence to contradict answers as to questions testing veracity.

- (i.) Where the witness is asked whether he has ever been convicted of any felony or misdemeanour and denies or refuses to answer (a);
- (ii.) Where he is asked a question tending to show that he is not impartial;
- (iii.) Where he has previously made inconsistent statements;
- (iv.) Where he can be shown to be a notorious liar.

In the first two cases proof may be given of the truth of the facts suggested. The other two cases are dealt with in the following paragraphs.

116. A witness may be asked whether he has, on a previous occasion, made a statement relative to the issue and inconsistent with his present testimony, the circumstances of the supposed statement being referred to sufficiently to designate the particular occasion, and if he does not admit that he made such a statement, proof may be given that he did in fact make it. The summary of evidence may be used to prove any statement which the witness made, and which it is proposed to contradict, and evidence may be called to prove that the evidence or a witness, though consistent with the summary, is not consistent with the evidence given by him at the investigation before the commanding officer. Such a question may be put, even though the statement may have been in writing (notwithstanding the rules as to documentary evidence), and even without the writing being shown to him or proved in the first instance; though it should be shown to him afterwards, and his attention called to those parts of the writing which are to be used to contradict him, as otherwise the contradictory proof cannot be given (b).

Cross-examination as to previous statements.

117. The credit of any witness may be impeached by the adverse party by the evidence of persons who swear that they, from their knowledge of the witness, believe him to be unworthy of credit on his oath. Such persons may not, on their examination-in-chief, give reasons for their belief, but they may be asked their reasons in cross-examination, and their answers cannot be contradicted. When the credit of a witness is so impeached, the party who called the witness may give evidence in reply to show that the witness is worthy of credit.

Impeaching credit of witnesses.

118. At the conclusion of the cross-examination the person who called the witness may, if he pleases, re-examine him; but the re-examination must be directed exclusively to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the court, introduced in re-examination, the other side may further cross-examine upon it.

Rule as to re-examination.

(a) 28 & 29 Vict., c. 18. Such questions could not be put to an accused person giving evidence except in the cases mentioned in para. 93A.

(b) 28 & 29 Vict., c. 18, ss. 4, 5.

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Discretion
of court as
to enforcing
rules.

119. Speaking generally, the above rules should only be enforced in their full strictness in the case of counsel or skilled advocates, or other persons who may be supposed to be thoroughly acquainted with the rules of evidence, and therefore may be presumed only to break the rules of evidence for the sake of obtaining an improper advantage. In other cases the court may allow considerable latitude and should interfere only where the interests of justice plainly require it.

CHAPTER VII.

OFFENCES PUNISHABLE BY ORDINARY LAW.

Introductory.

1. The first forty sections of the Army Act specify the various military offences of which a person subject to military law may be guilty. The sections embrace not only offences against discipline, but also offences against the persons and property of soldiers. Nearly all the offences of which a soldier can be guilty as a soldier and as against another soldier are included in these sections.

Liability of soldier to civil as well as military law.

A soldier, however, is not only a soldier but a citizen also, and as such is subject to the civil as well as to the military law. An act which constitutes an offence if committed by a civilian is none the less an offence if committed by a soldier, and a soldier not less than a civilian can be tried and punished for such an offence by the civil courts (a).

2. In order to give military courts complete jurisdiction over soldiers, those courts are authorised to try and punish soldiers for civil offences, namely, offences which, if committed in England, are punishable by the law of England.

Jurisdiction of military courts over civil offences.

They are not allowed to try the most serious offences (b)—treason, murder, manslaughter, treason-felony, or rape—if those offences can, with reasonable convenience, be tried by a civil court. They are, therefore, prohibited from trying any such offence if it is committed in the United Kingdom, or if it is committed anywhere else in the King's dominions, except Gibraltar, within a hundred miles from a place where the offender can be tried by a civil court, unless indeed the offence is committed on active service.

Subject to the above exceptions, a military court can try all civil offences of a soldier wherever committed.

3. But though this wide power of trial is given, it is not as a rule expedient to exercise the power universally.

Principles on which jurisdiction should be exercised.

Where troops are stationed at places having no available civil courts under British judges within a reasonable distance, or are stationed in a foreign country, and the only law to which the troops are subject is that administered by the military courts, it is necessary to try all offences committed by soldiers by military courts.

But in the United Kingdom, in most parts of India, and in most of the colonies, where there are regular civil courts close by, it is, as a general rule, inexpedient to try a civil offence by a military court, more especially if the offence is one which injured the property or person of a civilian, or if the civil authorities intimate a desire to bring the case before a civil court.

This general rule is, however, subject to qualifications. The line dividing the military from the civil offence may be narrow. The offence may have been committed within the barracks or military lines. There may be a doubt whether the person affected by the offence is or is not a civilian. The soldier may be one of a body of

(a) A.A. 41 (5), 162 (2), and Ch. VIII.
(b) A.A. 41.

Ch. VII. troops about to sail abroad. There may be reasons making the prompt infliction of punishment expedient. In any such case it may be desirable to try the offence by a military court.

There may be also considerations arising out of the importance of maintaining military discipline. If either offences of a particular kind or offences generally are rife in a corps or at a station, it may be necessary, for the sake of discipline, to try every offence, whether civil or military, by court-martial, so that the punishment may be prompt and the sentence exemplary.

The heinousness of an offence is also an element of consideration. A trifling offence, such as would, if tried before a civil court, be properly punishable by a small fine, may well be punished by the military court immediately, especially if the case is one in which stoppages may be ordered to make good damage occasioned by the offence (*a*). On the other hand, a more serious offence, especially one which would ordinarily be tried by a jury, had better be relegated to the civil court. So should any case where intricate questions of law are likely to arise, as, for instance, questions of obtaining goods or money by false pretences from civilians.

Scheme of
the chapter.

4. Though, then, the cases involving civil offences which will come before courts-martial will not be numerous, it is necessary to give some description of the offences which may come before them. It is the object of this chapter to do so briefly. The list is not exhaustive as no scientific classification of offences has been attempted, but the more common offences have been treated in greater detail than those which experience shows rarely, if ever, to come within the cognisance of courts-martial (*b*).

Before proceeding to a description of the various offences it will be convenient to discuss, first, the punishments which may be awarded, and, secondly, the general principles as to criminal responsibility, principles, it must be remembered, which are applicable to military not less than to civil offences.

(i) *Punishments.*

Punish-
ments.

5. Section 41 of the Army Act specifies the punishments which may be awarded for the most serious offences, treason, murder, manslaughter, treason-felony and rape. With regard to every other civil offence, the effect of the section is to authorise courts-martial to award as a maximum punishment either, in the case of an officer cashiering, or in the case of a soldier two years' imprisonment, with or without hard labour, or the punishment which under the civil law may be awarded for the offence. This rule is, of course, subject to the general limitation on the powers of punishment of regimental and district courts-martial (*c*), and to the prohibition applicable to all courts-martial against awarding a period of imprisonment exceeding two years (*d*). In the table at the end

(*a*) A.A. 138 (3).

(*b*) To those who wish for a more detailed knowledge of the criminal law of England the following authorities are recommended:—Russell on Crimes and Misdemeanours, Archbold's Pleadings and Evidence in Criminal Cases, Kenny's Outlines of Criminal Law, Stephen's Digest of Criminal Law, Stephen's General View of the Criminal Law, and the Report of the Criminal Code Bill Commission, 1879. A convenient summary of the law relating to each particular offence will be found in the Encyclopedia of the Laws of England (edited by Mr. A. W. Renton), under the proper heading, or in the "Laws of England," edited by Lord Halsbury.

(*c*) A.A. 47 (5), 48 (6). Under these provisions a regimental court-martial may not award a sentence of discharge with ignominy or in excess of detention for forty-two days. A district court-martial may award any punishment except death or penal servitude.

(*d*) A.A. 68 (2). Imprisonment is, of course, here used as distinct from penal servitude.

of this chapter will be found the punishments which a civil court can award in respect of each of the offences described in the chapter. A comparison of the various punishments will be a guide to the court as to the heinousness of each offence in the eye of the law. It must be remembered that each punishment specified in the table, as well as the alternative punishment of two years' imprisonment, is a maximum, and in awarding punishment for a civil offence a court-martial should be guided by exactly the same principles as those which should guide them in punishing military offences (a). Where a sentence of penal servitude is passed the term awarded must be not less than three years.

6. Other consequences besides the punishments awarded by the court sometimes result from a conviction, consequences which it will be well to bear in mind when passing sentence. Thus every conviction involves the consequence that the offender may be ordered to pay the whole or any part of the costs of the prosecution, and every conviction for *felony* involves the consequence that the offender may be ordered to pay any sum not exceeding £100 by way of compensation to any person who has suffered loss of property through his offence (b).

Other consequences of convictions.

So also if the offender is sentenced on a charge of treason or felony to—

Death,

Penal servitude,

Imprisonment with hard labour for any period, or

Imprisonment without hard labour for more than one year, he will forfeit any public office, and any pension or superannuation allowance payable out of any public funds, which he may then hold or be entitled to, unless he receives a free pardon within a limited time; he will also become incapable of holding any public office or employment in the future, until he receives a free pardon or has suffered his punishment, and been discharged from custody; and he will incur various other civil disabilities (c).

Again, if the offender is sentenced on a charge of felony to penal servitude, he will be disabled from making contracts, from suing at law, and from charging or parting with his property until he is pardoned or has suffered his punishment and been discharged from custody; and an administrator may be appointed to take charge of his property until such pardon or discharge, or until he dies, or is made bankrupt.

(ii) Responsibility for Crime.

7. The general rule is that a person is responsible for the natural consequences of his acts. But there are many cases in which it would be obviously unfair to make a person criminally responsible for doing a particular act, though under ordinary circumstances such an act would undoubtedly be an offence. The following are the principal cases of this kind which it is necessary to mention here.

Criminal responsibility.

8. A child is considered to be incapable of committing an offence before the age of seven years; and any act of a child between the ages of seven and fourteen can only be held to be an offence if it is shown affirmatively that the child had sufficient capacity to know the nature and consequences of his act, and to appreciate that he was doing wrong.

Children.

(a) See Ch. V, paras. 80-88.

(b) As to which offences are felonies, see table at end of chapter.

(c) See also A.A. 44 (11).

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Insane
persons.

9. A person cannot be convicted on a criminal charge in respect of an act done by him while labouring under such unsoundness of mind as made him incapable of appreciating the nature and quality of the act he was doing, or that such an act was wrong. Thus, if a man kills another under the insane delusion that he is breaking a jar, he will not be criminally responsible.

Every person is, however, presumed to be sane and to be responsible for his acts until the contrary appears, and it must, therefore, be clearly established that the accused is brought within the terms of the exception as above laid down before he can have the benefit of it (a). Unless a person is brought strictly within the terms of the exception it is no excuse whatever to show that his mind is affected by disease. For instance, the fact that a person is under the delusion that his nose is made of glass will not in any way excuse him if he commits an offence, unless he can prove that the delusion had a connection with the offence.

It is immaterial whether the unsoundness of mind is due to natural imbecility or produced by disease, or whether the disease itself is due to the sufferer's own dissipation, as, for instance, in the case of *delirium tremens*.

Temporary
intoxica-
tion.

10. If, however, the unsoundness of mind is the result of mere temporary intoxication from liquor or drugs, it will be no excuse if the intoxication is voluntary, but it will be an excuse if the intoxication is produced by fraud, or otherwise against the will of the patient. Even voluntary intoxication will often be an important fact in considering the intention with which an act was done where the intention is an essential part of the crime; for instance, if a person is accused of wounding another with intent to murder him, the fact that the accused was very drunk at the time ought to be taken into account in considering whether the intent is established; though even in such a case the intent may be proved by evidence of premeditation, or other facts (b).

Compul-
sion.

11. An act may also be excused if committed by a person acting in company with others, provided that he is compelled to act as he does by threats of death or serious injury, continued during the whole time that he so acts, and that the part taken by him in the unlawful act or acts is throughout strictly a subordinate part.

Necessity.

12. In extreme cases an act may sometimes be justified on the plea of necessity, if it is done by a person in order to avoid inevitable and irreparable evil to himself or those whom he is bound to protect, though, of course, the act must not be disproportionate to the end to be attained, nor must more be done than is absolutely necessary to attain that end. Thus if the captain of a steamer, without any fault on his part, finds himself in such a position that he must either change his course or run down a boat with twenty people in it, he is justified in changing his course, although by so doing he runs a risk of swamping a boat with two people in it.

Ignorance
of law.

13. Ignorance of law is no defence to a criminal charge. Thus, if A, a foreigner unacquainted with the law of England, kills B in a duel fought in England, A's act is murder, although he may have supposed it to be lawful. But such ignorance may properly be taken into consideration in determining the amount of punishment to be awarded.

(a) When on the trial by court-martial of a person charged with an offence it appears that such person committed the offence, but was insane at the time of its commission, the court must find specially the fact of his insanity.—A.A. 130 (3).

(b) See *R. v. Meade*, [1909] 1 K.B. 575.

14. Ignorance of *fact* will very often be an excuse, *i.e.*, a person's conduct will, as a rule, be judged as though the facts which he honestly and on reasonable grounds believed to exist at the time of such conduct had been the actual facts. But this excuse will not avail a person if his ignorance proceeds from wilfulness or negligence. In some few cases (which are noticed below when the offences are described (a)) even an honest and reasonable belief will not protect a man, if he is actually mistaken, and a man therefore does the act at his peril. Ch. VII.
Ignorance of fact.

15. Where a person has no excuse to prevent his being criminally responsible for the result of his actions, his responsibility will not be limited to the simple case where he is present, and actually commits an offence with his own hand. Thus, if a soldier negligently leaves a ball cartridge mixed with blank cartridges, he will be responsible if injury results. Parties to offence.

16. Again, where a person does an act by means of an innocent agent, as if a soldier knowing a note to be forged induces a comrade, who does not know it to be forged, to get it changed, or if a soldier, knowing that a pair of boots does not belong to him, induces a comrade to steal them by representing that they were his property and not the property of the actual possessor, in both these cases the soldier, but not his comrade, is responsible. Innocent agent.

17. Similarly, if a person assists another in the commission of an offence he is responsible as though he had committed it himself; and even if such assistance is indirectly given, as, for instance, if two or three men go out together to commit a burglary, and one waits at the corner of the street to keep watch while the others commit the burglary, the watcher will be guilty of burglary equally with the others. On the other hand, if the offence charged involves some special intent, it must be shown that the assistant was cognisant of the intentions of the person whom he assisted; thus, on a charge of wounding with intent to murder, it must be shown that an assistant not only assisted the principal offender in what he did, but also knew what his intention was, before the former can be convicted on the full charge. Assisting offence.

18. If several persons go out with a common intent to execute some criminal purpose, each is responsible for every offence committed by any one of them in furtherance of that purpose, but not for any offence committed by another member of the party which is unconnected with the common purpose, unless he personally instigates or assists in its commission. Thus, if a police officer goes with an assistant to arrest A in a house and all the occupants of this house resist the arrest, and in the struggle the assistant is killed the occupants are responsible. But if two persons go out to commit theft and one unknown to the other puts a pistol in his pocket and shoots a man the other is not responsible. Common intent.

19. A person is in all cases fully responsible for any offence which is committed by another at his instigation; even though the offence may be committed in a different way from the one that he suggested, as, for instance, if a person were to instigate another to murder a man by shooting him, and the murderer stabbed the man instead, the instigator would still be responsible. Further, he is responsible for any other offence which may, and was likely to result from such instigation. But a person will not be responsible for an offence which he may have instigated another Instigating an offence.

(a) See paras. 36, 40.

Ch. VII. to commit, if he countermanded its execution, and notice of the countermand was received by the person instigated before the commission of the offence (a): nor where he instigates one offence will he be responsible for the commission of another unconnected therewith.

Knowledge
of intended
offence.

20. Mere knowledge that a person is about to commit an offence, and even conduct influenced by such knowledge, will not make a person responsible for that offence unless he does something actively to encourage its commission; for instance, if a man knows that two others are going to fight a prize-fight, and acts as stake-holder, but takes no other part in the circumstances attending the fight, at which he is not present, and one of the prize-fighters is killed, the stake-holder will not be responsible for his death.

Accessory
before the
fact.

21. When a person is responsible for an offence under paras. 17, 18, and 19, he is equally responsible and liable to the same punishment as the principal offender. Such a person if not present at the actual commission of the offence is called an accessory before the fact, if the offence is a felony.

Accessory
after the
fact.

22. A person may in some cases incur criminal responsibility, even after an offence has been committed, if the offence is a *felony* (b), and he becomes what is called an accessory after the fact, *i.e.*, if he assists the felon to evade justice (knowing that he has committed a felony) either by comforting, hiding, or otherwise actively assisting him, or by opposing his apprehension, or rescuing him from arrest, or by voluntarily permitting the felon to escape from his custody, where the accessory is himself the custodian. The mere allowing a felon to escape, without giving him active assistance, will not make a person an accessory after the fact, except in the case above mentioned, where the accessory is himself the custodian.

Attempt to
commit
offence.

23. An endeavour to commit or to procure the commission of an offence is in itself an offence and renders a person criminally responsible, even though the endeavour is unsuccessful (c).

A mere intention to commit an offence unaccompanied by acts will not amount to an actual "attempt," nor will acts themselves, if they are merely preparatory to the commission of the offence. For instance, if a man goes to Birmingham to buy dies to make bad money, the mere going there is not an attempt to make bad money. Some act must be done which is more than an intention or preparation, and which is a real step towards the commission of the offence; thus, if the man had not only gone to Birmingham, but had actually bought the dies, he would have been guilty of an attempt to make bad money.

It is not necessary that it should have been legally or physically possible for the offender to have committed the full offence.

Intention.

24. In some cases the intention with which an act is committed becomes essential; where this is the case, the intention may either be proved by independent evidence, as, for instance, by words proved to have been used by the offender or by a previous course of conduct (d), or may be presumed from the act itself, according to the maxim that a man intends the natural consequences of his own act. In

(a) Of course, though the execution of the crime was countermanded, the instigator would still be liable to be prosecuted for the misdemeanour of inciting to commit an offence, though not for the offence itself.

(b) As to what offences are felonies, see table at end of chapter.

(c) As to attempts to murder, see para. 54; and as to what amounts to an attempt to shoot, see para. 35 (footnote).

(d) See Ch. VI, paras. 22-24, and 92A.

other words, the mode of discovering a man's intention is to consider what were at the time of his act the natural consequences of that act. Thus, if A sets fire to B's mill, the intent of A to injure B is inferred as being a natural consequence of the act of A in setting fire to the mill. Ch. VII.

Intention in this context means the immediate intention as distinguished from motive or ulterior intention.

If a man bound by law to perform any duty does an act which necessarily causes, or most probably will cause, a failure in the performance of that duty, he will be held in law to have intended to fail, and therefore to have wilfully failed, to perform that duty.

Thus, for example, if one soldier in charge of another who is in military custody leaves him in a public-house, and goes away to visit a friend elsewhere, and the soldier in custody escapes, the soldier in charge of him must be considered to have wilfully permitted him to escape, because the escape was the natural result of the act; but if there was no evidence of any deliberate act of the soldier contrary to his duty, or if the escape was due to mere ordinary carelessness in the course of the performance of the soldier's duty, then he could not be held wilfully to have permitted the escape.

25. Generally speaking, a person will not be criminally responsible for an act affecting the person or property of another if done with that other's consent. This does not apply to cases of killing or maiming, except when the killing or maiming results from a surgical or some similar operation reasonably and properly performed for the sufferer (*a*). Thus, if one soldier with the consent or even at the request of another cuts off that other's forefinger with a view to enable him to obtain his discharge, the consent or request does not relieve the former of responsibility. The consent must be free and must not be extorted by fear of injury or given under a misapprehension of fact. Such a consent, or the consent of a lunatic, of a child under twelve, or of a person in a state of intoxication, will not relieve the person who does the act of responsibility if the act apart from the consent would constitute an offence. Consent.

26. A person is not criminally responsible for the result of a pure accident which is not to be attributed in any way to any carelessness or negligence, or to an unlawful act on his part. Accident.

Thus if a woodcutter is lawfully cutting down a tree and the head of his axe flies off, or if a man is lawfully riding down a road and his horse is whipped by another person, and caused to start off, or if a man is lawfully shooting at game or any other object, and in any of these cases there result to a bystander injuries which cannot be attributed to negligence on the part of the woodcutter, rider, or shooter, as the case may be, he will not be responsible for the injuries caused.

On the other hand, if a person points a gun at another in sport and pulls the trigger without having good grounds for believing, or having taken any proper precautions to ascertain, that the gun was unloaded, he will be responsible, as the accident might clearly have been prevented if he had not been culpably negligent; but if a gunmaker showing a gun to a customer and having good reason to believe that it is unloaded, pulls the trigger and the gun is really loaded and shoots the customer, the gunmaker will not be responsible, even though he had not taken every possible means to ascertain whether the gun was or was not loaded.

(a) In cases of this kind the consent of the sufferer will be presumed if he is unable to give it (*e.g.*, if he is unconscious from the loss of blood).

Ch. VII. In each of the above illustrations it will be noticed that it is assumed that the act from which the injuries resulted was not in itself an unlawful act. For if the act was in itself unlawful, as if the woodcutter was doing an unlawful and malicious injury to the property of another, if the rider was a horse thief riding away with a stolen horse, if the shooter was a poacher; or if the man presenting a loaded gun was assaulting the person shot, the offender would in each case be criminally responsible for the injuries caused. This qualification is, however, confined to the cases of acts which are in themselves *unlawful*, and not so because mere breaches of excise laws or similar regulations; for instance, if the shooter, instead of being a poacher, were merely shooting without a gun licence, this would not of itself render him criminally responsible.

Negligence. 27. If a person fails to take proper precautions when doing anything which is in its nature dangerous, he will be responsible though he had not the least intention of bringing about the consequences of his act (*a*). For instance, if a soldier lets off his rifle without taking the precautions proper under the particular circumstances and the bullet kills a man, the soldier will be responsible for his death.

(iii.) *Responsibility for the Use of Force.*

Use of
force.

28. The general rule is that a person is criminally responsible for the use of force, but in many cases the use of force is justifiable. The amount of force which may be so used and the circumstances under which it may be used vary widely.

Amount of
force to be
used.

29. In some cases any amount of force may be used, even if it entails bodily injury or even death; in other cases any amount of force may be used provided that it is not used in a manner intended or likely to cause death or grievous bodily harm.

The general principle applicable to all cases is that *no more force* may be used in any case than the person using it believes, and has reasonable grounds for believing, to be necessary to effect the object in respect of which he is entitled to use force. So long as this principle is observed, a person is not responsible for the consequences which may result in any particular case from the use of any force which is not in excess of that allowed in the class of cases to which it belongs. Nor will a person be responsible if death accidentally results from the legitimate use of force.

Cases in
which use
of force is
justifiable.

30. The most important cases in which the use of force is justifiable are cases relating to administration of justice, prevention of crime, self-defence, the defence of property, the preservation of discipline, and the defence of the realm.

A person acting as a ministerial officer in execution of the orders of some superior authority, and any person lawfully assisting him, may use force in obedience to the orders of the superior authority, if that authority when giving the order is acting as a court: that is to say, acting in a judicial capacity, in the exercise of some jurisdiction conferred by law.

The general rule in such cases is that any duly authorised person is justified in using whatever force may be necessary in order to execute the lawful order of a court of competent authority, and in overcoming any violent resistance which may be made to the lawful use of such force, as, for instance, a police officer in

(a) See also para. 21.

executing a warrant of arrest. But such a person must not use such force as is either likely or intended to cause death or grievous bodily harm (unless he is violently resisted), except where he is specially required to do so by the order itself, or where the order is a warrant of arrest for treason, felony (a), or piracy in which cases he may at once use whatever amount of force may be necessary. Should a person be unable to justify himself under the rule above stated, it will in general be no excuse for him to show that he acted under the orders of some superior civil or military authority. His justification will, in such cases, depend upon the same considerations as though he had acted entirely on his own responsibility; and the fact of his having received the orders will merely be of importance as a fact in the case which may throw light upon the state of his mind, as to reasonable belief, intent, or otherwise.

If a person believes on reasonable grounds that another is about to commit any treason or violent crime he is justified in using any amount of force in preventing its commission. Similarly, any amount of force may be used by an officer of justice to execute a warrant of arrest for treason or felony, provided in either case that the object for which force is used cannot be otherwise accomplished.

If a person is lawfully called upon to assist a peace officer in the execution of his duty, he is bound to go to the officer's assistance, and will be justified in using force to the same extent as the officer himself.

The law respecting the use of force for the suppression of riots and breaches of the peace is dealt with in another part of this work (b).

A person may in all cases use any amount of force which is reasonably necessary for the defence of himself or his property, if he is not himself in the wrong (c).

A person who is in peaceable possession of property of any description is entitled to defend it against trespassers, and to use force for the purpose of removing them from his land, or of retaining or re-taking his goods from them; but he must not intentionally strike or hurt an ordinary trespasser unless he is resisted, in which case he may use such force as is reasonably necessary to overcome such resistance, though even in this case, unless himself assaulted and in danger, he must not intentionally inflict death or grievous bodily harm. If, however, the trespass is a serious one, as where a trespasser endeavours forcibly to break and enter a dwelling-house with the intention of committing an indictable offence therein, any amount of force may be used to prevent him; and if it is night, such force may be used even though the trespasser has really no such intention, if the person using the force reasonably believes that he has such an intention.

The law also permits force to be used for correction or for the maintenance of discipline. Thus a parent or schoolmaster may forcibly correct any child or pupil under his care. In all such cases the force used must be reasonable and not excessive (d), otherwise the person using the force will be fully responsible for the consequences.

Finally, the law permits the use of force against the enemies of the realm in the actual heat and exercise of war.

(a) As to what offences are felonies, see table at the end of the chapter.

(b) See Ch. XIII.

(c) For an illustration of this, see Ch. VIII, para. 94.

(d) See case of Governor Wall, Ch. VIII, paras. 89-91.

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(iv.) *Responsibility for Acts of Omission.*

Acts of omission.

31. A person is not ordinarily considered to cause injury to another by the mere omission of an act; thus, if a man sees another drowning and is able to save him by holding out his hand, but omits to do so, even *in the hope* that the other may be drowned, still he is not criminally responsible.

On the other hand, where the law imposes upon a person the duty of performing some particular act, he is held responsible if he omits to do so. For example, every person who has charge of another, *e.g.*, a lunatic, an invalid, or a prisoner, is bound to provide him with necessaries if he is so helpless as to be unable to provide himself: and if death results from a neglect of such duty, the person in charge will be responsible unless he can show some good excuse.

So, in the case of an animal known to be dangerous, the person in charge is bound to take such precautions as will safeguard the public from danger.

Omission to perform duty.

32. Similarly, if a person undertakes to do any act the omission of which may endanger human life (as, for instance, warning persons from a range whilst firing is going on), and without lawful excuse omits to discharge that duty, he is responsible for the consequences. Again, if a person undertakes (except in cases of necessity) to administer surgical or medical treatment, or to do any other act which may be dangerous to human life, he is responsible if death results from a want of reasonable care and skill on his part. For instance, if a soldier were to undertake to cut off the trigger finger of another soldier and mortification set in, he would be responsible for the consequences of his act.

Neglect of servants.

33. If a person, legally liable as a master to provide necessary food, clothing or lodging for a servant, wilfully and without lawful excuse refuses or neglects to do so, so that the life of the servant is endangered, or his health is or is likely to be permanently injured, he is guilty of an offence.

The offence must be wilful and without legal excuse.

There is no limit as to the age of the servant.

(v) *Assaults and Sexual Offences.*

Assault.

34. Assault in its simplest form consists of the use of force, either directly or indirectly, against a person without his consent.

The use of force, however slight, is sufficient, but it must be used with the intention to cause, or with the knowledge that it is likely to cause injury, fear, or annoyance to the other person.

The consent of the other person, in order to be an excuse, must be *bonâ fide* consent and not mere acquiescence (a).

Not only the actual use of such force, but any act or gesture which causes the other person to apprehend that force will be used, is sufficient to constitute the offence of assault. Thus, shaking a fist in a man's face or pointing a pistol at him, may be assaults.

A common assault, such as has been described above, is not a very serious offence, but if the assault is attended with aggravating circumstances it becomes far more serious, and if death results from the assault it becomes homicide.

(a) See also para. 25.

35. The following are examples of aggravated assaults :—

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- (1) Assaults with intent to commit a felony.
- (2) Assaults with intent to resist the lawful arrest or detention of a person.
- (3) Assaults on a peace officer in the execution of his duty.
- (4) Assaults occasioning actual bodily harm, i.e., injury calculated to interfere with the health or comfort of the sufferer.
- (5) Unlawful wounding, i.e., unlawfully and maliciously inflicting injuries which sever the skin.
- (6) Shooting or attempting to shoot (a) at another with the intent to do some grievous bodily harm to him, or to prevent the apprehension or detention of a person.

Aggravated assaults.

36. The most important cases of aggravated assaults are indecent assaults; that is, assaults on a male or a female, accompanied with circumstances of indecency. Indecent assaults.

37. Rape is the act of a man having carnal knowledge without her consent of a female who is not his wife (b). Rape.

Penetration is considered to constitute carnal knowledge; it must therefore be proved that there was actual penetration of the female organ by some part of the male organ. The slightest penetration will be sufficient; it is not necessary to prove that there was such penetration as would be sufficient to rupture the hymen. Whether there was an emission of semen or not is immaterial.

It is not an excuse that the woman was a common prostitute, or the concubine of the ravisher, if the offence was committed by force or against her will; though proof of such facts is admissible, and is of course important in considering whether or not she is likely to have consented.

Consent, to be an excuse, must be actual consent, and not mere submission, and it must be voluntary, and not extorted by force or fear of immediate bodily harm (c). Thus, if an idiot submits to a man having connection with her without actually permitting it, this is no consent, but if she actually permits the act, though from mere sexual instinct, and without really understanding its nature, this is a sufficient consent, and therefore the man is not guilty of rape (d).

A boy under the age of fourteen is conclusively presumed to be incapable of having carnal knowledge, and evidence cannot be received to show that he is capable in point of fact. He may, however, be convicted of an indecent assault, and may, if he has aided another person to commit rape, be convicted of rape.

38. Carnal knowledge (e) of a girl under the age of sixteen is an offence even though the girl consents (f). Carnal knowledge of a child.

If the girl is over thirteen it is a sufficient defence to show that the accused had reasonable cause to believe that the girl was over sixteen. The prosecution for the offence must be commenced within six months from the commission of the offence.

(a) A man attempts to shoot if he does any act (such as pulling out a loaded pistol, pointing it at a person, or fumbling with the trigger) from which it might be inferred that he intended to discharge it. See also para. 23.

(b) Though a husband cannot himself commit rape on his wife, he may be convicted of rape if he assists another person to commit rape on her.

(c) See also para. 25.

(d) Though not guilty of rape, he is guilty of an offence punishable with two years' imprisonment, if at the time he knew she was an idiot or imbecile.

(e) For definition, see para. 37.

Of course, if the child does not consent the offence becomes rape.

Ch. VII. If the girl is under thirteen, it is no excuse, whether the offence has been committed or only attempted, that the offender believed that the girl was above the specified age, if she was really below it.

If the girl herself or any other child of tender years tendered as a witness does not understand the nature of an oath, their evidence may be received though not on oath, if the court is of opinion that the girl or child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth, but no person may be convicted in any such case unless such unsworn evidence is corroborated by some other material evidence in support of it implicating the accused; and the witness will be liable to be punished for perjury for giving false evidence exactly as if he or she had been sworn (*a*).

It is an offence for any person who is the owner or occupier of any premises of which he has the control or management, to induce or knowingly to suffer any girl under sixteen to resort to or be on the premises for the purpose of being carnally known by a man. It is a sufficient defence to show that the accused had reasonable grounds to believe that the girl was sixteen or over.

It is an offence in any person (*e.g.* a parent) having charge or custody of a girl under sixteen, to allow her to frequent brothels, or to cause or encourage her seduction or prostitution, or unlawful carnal knowledge.

Procuring
girl to
become a
prostitute,
&c.

39. It is an offence by threats or intimidation to procure any woman or girl to have any unlawful carnal connection within or without the King's dominions.

Whoever takes away or detains any woman, of whatever age, against her will by force with the intention that she may be known by himself or any one else, is guilty of an offence (*b*).

Abduction.

40. It is an offence to take, or cause to be taken, out of the possession and against the will of a person who has lawful charge of her—

- (1.) An unmarried girl under the age of sixteen.
- (2.) An unmarried girl under the age of eighteen, with the intent that she may be carnally known by a man.

To constitute the former of these offences it is immaterial whether the girl consents, and whether the taking is permanent or temporary, provided that she is taken under the charge of the offender and out of the control of the person who has lawful charge of her. Thus, if a man persuades a girl under sixteen to leave her father's house and sleep one or more nights with him, or if a man, at the request of a girl whom he has seduced, elopes with her, he has been guilty of the offence.

In the case of the second offence, but not of the first, it is a sufficient excuse to show that the accused had reasonable cause to believe that the girl was over the specified age.

In either case it is necessary for the prosecution to prove that the offender had reason to believe that the girl was in the charge of some one.

It is no excuse that the guardian consented if the consent was obtained by fraud.

If two or more persons agree to try to induce a woman to commit adultery or fornication, or to take any woman from the lawful

(*a*) For other cases where the unsworn testimony of a child may be received in evidence, see Ch. VI, para. 87 (footnote).

(*b*) There are also special provisions as to similar offences where the woman possesses property

custody of her parents in order to marry her to any person without the parents' consent, each of them is guilty of an offence (a). **Ch. VII**

41. If a person intending to procure the miscarriage of a woman, *whether or not she is actually with child*, unlawfully (b) causes her to take any poison or other noxious thing, or uses any instrument or other means with that intent, he is guilty of an offence. **Procuring abortion.**

The supplying of a poison, noxious thing, or instruments, with the intent that it or they should be used for the purpose of procuring a miscarriage, is also an offence.

42. The offence of sodomy is when a male has carnal knowledge of an animal or has carnal knowledge of a human being "per anum." Penetration is required, as in the case of rape, to constitute carnal knowledge. **Sodomy.**

A person over the age of fourteen allowing himself or herself to be known in this manner is guilty of the same offence.

43. It is an offence for a male person, either in *public or private*, to commit, or to be a party to, the commission of any act of gross indecency with another male person; or to procure the commission of any such act. **Acts of indecency.**

It is also an offence to do any grossly indecent act in a public place in the presence of two or more persons, or to publicly expose the person, or exhibit any disgusting object.

It is further an offence to sell or expose for sale or view any obscene book, print, picture, or other indecent exhibition.

44. The keeping of a disorderly house, that is, a common brothel, a common gaming house or a common betting house, is an offence. **Disorderly houses.**

45. The doing of a dangerous act with a criminal intention is itself an offence. The following are instances of such offences:— **Dangerous act.**

(1.) The use of explosives with the intention of causing injury, whether or not an explosion actually takes place or any injury is caused.

(2.) Unlawfully causing another to take poison, or any other noxious thing, so as to cause him grievous bodily harm, or with the intent that he may be injured or annoyed.

In a few cases the doing of a dangerous thing is an offence, if injury or danger is actually caused, even though none was intended. For instance, the causing of bodily harm to a person by furious driving or racing, or other wilful misconduct, or by wilful neglect, on the part of the person in charge of a vehicle (c). The offence is, of course, aggravated if a specific criminal intention is also present.

(vi) Offences against Children.

46. If a person over sixteen years old, who has the care of a child under sixteen years old, wilfully assaults, ill-treats, neglects, abandons, or exposes the child, or causes it to be so treated, in a manner likely to cause the child unnecessary suffering or injury to health, he is guilty of an offence. **Ill-treatment of children.**

The ill-treatment of the child must be wilful.

Injury to health includes mental derangement.

The wife of the accused is in this case a *competent*, but not a *compellable*, witness for the prosecution as well as for the defence.

47. It is a more serious offence to abandon or expose a child under two years of age, so that its life is endangered, or its health is or is likely to be permanently injured. **Abandonment of children.**

(a) As to consent, see para. 25.

(b) Medical treatment rendered necessary by the woman's state of health, is of course, not unlawful.

(c) See also para. 32.

Ch. VII. **48.** A person who endeavours to conceal the birth of a child by a secret disposition of its dead body is guilty of an offence.
Conceal- It is immaterial whether the child died before, during, or after
ment of birth.
birth.

(vii) *Homicide.*

Homicide. **49.** If the death of a human being results from any action of any person, that person is said to have committed homicide.

A person is criminally responsible for homicide unless he can show some legal excuse; the consent of the person killed is no excuse (a).

Death must result, either directly or indirectly, from the act. Whether it does so or not must depend on the circumstances of the case, but if the death occurs more than a year and a day after the act, the law presumes that death did not result from the act but from some other cause, and the accused cannot be made responsible.

Further, a person is not responsible for causing death unless death naturally results from his conduct. For instance, if a person wounds another dangerously, and that other dies, whether from neglect of proper treatment, or from improper treatment applied in good faith for the purpose of effecting a cure, the person causing the injury is legally responsible for the death; on the other hand, if the wound is not dangerous in itself, but is rendered so by improper treatment, he is not responsible.

The death caused must be that of a human being. A child is considered to become a human being as soon as it has wholly proceeded in a living state from the body of its mother, and has an independent circulation, whether it has breathed or not, and whether the umbilical cord has or has not been severed; and a person is responsible for killing such a child, though the injuries of which it dies were inflicted by him before or during birth.

A person is guilty of causing death even if he merely accelerated the other's death, and it is no excuse that the person killed must have died very shortly from some other cause.

The fact that the blame is shared by another will not relieve from responsibility a person contributing to the death. Thus, if two drivers are illegally racing their carts along a high road, and one or both of the carts run over a drunken man and kill him, each driver is responsible for having caused the death.

Murder.

50. If a person has unlawfully caused death by conduct which was intended to cause death or grievous bodily harm to some person, or even by conduct which any reasonable man must have known would be likely to cause death or grievous bodily harm to some person, whatever the intention of the offender may have been, he is guilty of murder.

It is immaterial whether the person intended to be killed or injured is the person actually killed or some other person.

If a person is proved to have killed another, the law presumes *prima facie* that he is guilty of murder. It will be on the accused to prove such facts as may reduce the offence to manslaughter, or excuse him from all criminal responsibility.

It must not be supposed that the offence is not murder unless the offender has deliberately intended to kill the person who is killed. This is one kind of murder, and the most usual kind, but there are many others.

(a) As to when the use of force resulting or possibly resulting, in death is justifiable, see para. 30

A person is also guilty of murder—

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- (1.) If he causes death by any act done with the intention of committing any felony (*a*), and the act is known to be dangerous to life and likely in itself to cause death, for instance, if a woman dies from the effects of being treated with a view to procure abortion ; and
- (2.) If he unlawfully resists and kills any person who is lawfully endeavouring to execute the duties of an officer of justice, or the orders of some civil or military authority, provided that the offender has sufficient notice of the capacity in which the person killed is acting.

51. Sending a letter threatening to murder, and even the delivery of such a letter, knowing its contents, is an offence.

Letters threatening to murder.

52. It may be taken generally, that in all cases where a killing cannot be justified, if it does not amount to murder, it is manslaughter, and a person charged with murder can be convicted of manslaughter.

Manslaughter.

For instance, an act of negligence or other unlawful act which results in death, if the act is not such that a reasonable man must have known that it would be likely to cause death or injury to some one, would render the person guilty of manslaughter, not of murder.

Again, the offence is manslaughter if the act from which death results was committed under the influence of passion arising from extreme provocation.

But it must be distinctly understood that no person is considered to give provocation to an offender merely by doing that which he has a legal right to do, or which the offender has incited him to do with the express purpose of providing himself with an excuse.

The provocation must also be great, that is to say, practically speaking, such as might reasonably be expected to put an ordinary person not of an exceptionally passionate disposition into such a passion that he would lose his power of self-control.

Gestures or injuries to property, or breaches of contract, or slight blows unaccompanied by special insult, are not considered a sufficient provocation.

Mere words, again, are not considered to afford sufficient provocation, except, perhaps, in some extreme cases. Where, however, words are accompanied by a blow, though a slight one, the two may be taken into account together in estimating whether the provocation is sufficient.

53. It must be clearly established in all cases where provocation is put forward as an excuse, that *at the time* when the crime was committed the offender was actually so completely under the influence of passion arising from the provocation, that he was *at that moment* deprived of the power of self-control ; and with this view it will be necessary to consider carefully the manner in which the crime was committed, the length of the interval between the provocation and the killing, the conduct of the offender during that interval, and all other circumstances tending to show his state of mind.

Test of sufficiency of provocation.

54. Attempts to murder (*b*) are only one degree less criminal than murder itself, and any person doing or attempting to do any act with intent to commit murder is guilty of an offence.

Attempt to murder.

(a) As to what offences are felonies, see table at end of chapter.

(b) As to what amounts to an attempt, see para. 23.

Ch. VII. The act or attempt alleged, for instance, a wounding or stabbing, an attempt to fire a pistol (*a*) which does not go off, or any similar act or attempt, must be laid in this charge and proved as laid.

It must also be proved that the accused intended thereby to commit murder, which intent may be gathered from the nature of the act itself, or may be proved by other evidence, as for instance, by threats and words proved to have been used by the accused (*b*).

Conspiracy
to murder.

55. It is an offence to conspire with or endeavour to persuade or propose to any other person to murder a third party, whether a subject of the King or not, and this even though no overt act is done or attempted.

(viii) *Theft and the Cognate Offences.*

Theft.

56. Theft may be described as the fraudulent taking of any movable property out of the possession of any person without that person's consent, with the intention of permanently depriving that person of the property.

In the consideration of a charge of theft the following points must be borne in mind :—

The property must be taken fraudulently, that is, without any colour of right. If it is taken under the supposition, honestly entertained, that the taker has an immediate right to possession (*c*), the taking is not fraudulent, and there is no theft.

The fraudulent intention must exist at the time of the taking. If the taking is innocent, a subsequent fraudulent misappropriation of the property will not constitute theft.

The property must be taken with the intention of permanently depriving the possessor of it. Whether such an intention existed is a question to be decided in the light of the facts of the case as a whole.

The taking must be without the consent of the possessor. Consent will not be an excuse if extorted by force or fraud (*d*).

But if not only the possession of, but also the property in, any goods (*e*) is obtained by fraud, the offence committed is not theft, but obtaining goods under false pretences, an offence which is dealt with below (*f*).

The property must be movable property ; anything attached to the ground, such as trees, or any part of a tree, corn, grass, and the like, is not the subject of theft unless it has been made movable by severance (*g*).

The smallest amount of moving, so long as there is a severance of the property from the possession of the person from whom it is taken, is sufficient to constitute a taking. Thus, taking goods

(a) As to what amounts to an attempt to fire a pistol, see note to para. 35.

(b) Attempts to commit suicide do not amount to attempts to commit murder ; such attempts should be dealt with under A.A. 38 (2).

(c) Thus a person who has pawned his watch can steal the watch from the pawnbroker, because he has no right to possession until he has redeemed it.

(d) See also para. 25.

(e) The property in the goods is obtained if the person obtaining them becomes the owner. Thus if a person sells goods, the property in the goods passes to the purchaser ; if he pawns them, the pawnbroker obtains the possession of, but not the property in, the goods.

(f) Para. 62.

(g) At common law many other things were not the subject of theft ; see the list of these things, and the statutory modification of that list in note to para. 62. The only difference, so far as the offence of theft is concerned, between theft of a thing a subject of theft at common law, and of a thing a subject of theft by statute, lies in the amount of punishment that may be awarded (as to which see Table at the end of the chapter).

out of a box and laying them on the floor is sufficient to constitute theft if the other elements of theft exist. The line between what is and what is not a sufficient taking is extremely fine, and if there is any doubt as to whether the taking is sufficient it will be well to convict of an attempt to steal only.

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Finally, there must be deprivation of possession. It does not matter whether the possession is rightful or wrongful. A thing can be stolen from a thief who has himself stolen it, not less than from the rightful owner of the thing. A person cannot steal a thing which is not in the possession of any one, (a) and generally speaking cannot steal a thing which is in his own possession. An exception to this last statement is to be found in the statutory offence of theft by a bailee. Where a person (called the bailor) has entrusted an article to the care of another person (called the bailee) and the bailee fraudulently misappropriates the article, he is guilty of theft (b). This offence, however, is only committed where an obligation would be implied to return the exact article entrusted. For instance, if a sum of money were entrusted to the bailee, his obligation would ordinarily be not to return the identical coins deposited with him, but only the equivalent sum of money. But though not guilty of theft, a person who fraudulently misappropriates any property, or the proceeds of any property which is entrusted to him on behalf of any other person or for safe custody, or for application to any purpose, is guilty of a misdemeanour, even though he was not bound to retain or return the actual property entrusted to him (c).

Possession of lost property and possession by servants.

57. In considering the question of possession, two things must be borne in mind :—(1) That a thing which is lost, in the eye of the law, remains, unless abandoned, in the possession of the loser, and (2) that possession by a servant of anything on behalf of his master is considered to be the possession of the master or the possession of the servant according to the circumstances in which the servant originally received it. If, for instance, a servant is given the custody of anything by his master, or by a fellow-servant who has been given the custody of it by his master, the servant will have no real possession of the thing, and the possession will remain in the master. Therefore any fraudulent misappropriation of the thing by the servant will be theft. If, however, a servant receives anything from a third person on his master's account, then the servant will have possession of the thing and the master will have no possession until the servant does some act by which the possession is transferred from the servant to the master.

Stealing lost property.

58. From the first of the above considerations it follows that a person finding property which has been lost, can steal it, though apparently in the possession of no one, if the other necessary elements of theft (e.g., a fraudulent intention to appropriate) are present at the time of the finding. This rule is subject to the exception that if the finder, at the time, does not know, and has no reasonable grounds to believe that he can find out who the owner is, the taking possession is considered to be innocent, and no subsequent misappropriation of it by the finder can amount to theft. Thus if a soldier finds a sovereign lying about in barracks and immediately appropriates it, this would be theft, but if he found the sovereign lying in a street outside barracks this would not be theft, even though he afterwards discovered that it belonged to a comrade

(a) See also A.A. 17 and 18 (4), and notes.

(b) See 24 and 25 Vict., c. 96, s. 3.

(c) See 1 Edw. 7, c. 10.

Ch. VII. and did not mention that he had found it and kept it for his own use.

Embezzlement.

59. From the second consideration it follows that a servant can steal a thing, the custody of which he has received from his master, but not a thing which he has received from a third person on behalf of his master. But though not guilty of theft in the latter case, the servant is guilty of an offence closely resembling theft and which is called embezzlement (*a*). This offence consists in the fraudulent appropriation by a servant of property belonging to his master of which he has possession under circumstances which constitute such possession the possession of the servant and not of the master.

By servant is meant a person who is bound not merely to carry out the instructions of his employer as to what to do, but also as to how and when to do it. The employment may be either general, or for a specified time, or for the performance of a single act.

On a charge of embezzlement the fraudulent misappropriation of the property may be inferred either from the fact that the accused person has not handed it over in the ordinary course, or from the fact of his having falsely accounted for it, or from the fact that on an examination of his accounts there is a general deficiency which he is unable to explain, or from the fact of his having absconded, or in any similar way. It must, however, be remembered that none of these facts in itself constitutes the offence of embezzlement; each is *evidence* only of fraudulent misappropriation.

Conviction for theft on charge of embezzlement and vice versa.

60. If, on a charge of embezzlement, it turns out that the offence is in fact theft and not embezzlement, or if on a charge of theft it appears that the offence is really embezzlement, the accused is not entitled to be acquitted, but may be convicted of the offence actually proved on the charge which has been preferred. As a natural sequence to this provision, if a person is once acquitted of embezzlement or theft, he cannot be afterwards charged with the alternative offence of theft or embezzlement on the same facts.

Embezzlement by persons in public service.

61. A somewhat similar offence is where a person who is employed in the public service fraudulently converts any chattel, money, or security of which he has the control by virtue of such appointment, to any purpose other than the public service.

Obtaining goods by false pretences.

62. As has been said (para. 56), when a person obtains not only the possession of but also the property in goods by fraud, the offence is not theft but obtaining goods under false pretences. The elements constituting the offence of obtaining goods under false pretences are very similar to those constituting theft.

There must have been an intention of depriving the owner permanently of the thing obtained, and the intention must have been fraudulent, though there need not have been an intention to defraud any particular person.

The goods must have been obtained either directly or indirectly by the pretence, that is to say, they would not have been obtained but for the pretence. If the person from whom the goods are obtained is not deceived by the pretence, but knows it to be false, the goods are not obtained by false pretences, but in such a case the person making the false statement may be convicted of attempting to obtain the goods by false pretences.

(a) Embezzlement in the narrow sense is confined to acts of misappropriation committed by persons in the position of clerks and servants. But in its wider sense it aptly describes fraudulent misappropriation of all sorts; and is so used in connection with various offences under the Army Act, *e.g.*, those dealt with by ss. 17, 18 (4), 56 (1) and (2).

The false pretence must be a false representation, express or implied, as to the past or present existence of some fact; a mere promise as to future conduct, or representations as to future expectations are not sufficient. For instance, the giving a cheque in exchange for goods is a representation that the drawer has an account at the bank on which the cheque is drawn, and that that account is in such condition that in the ordinary course of events the cheque will be met. If the drawer knows that these conditions do not exist the giving of the cheque is in law a false pretence. But representations of future expectations, unless they are representations of existing facts, do not constitute a false pretence, and obtaining goods on credit by means of such representations is not obtaining goods by false pretences.

The false pretence may be made in any way, either by words, by writing, or by conduct; for instance, if a person, not being an officer in the army, represents himself to be so by wearing an officer's uniform, and thus obtains goods from a tradesman: this is false pretence by conduct.

It is no excuse to say that a person of common prudence could easily have found out that the pretence was untrue, nor to say that the existence of the alleged fact was impossible, or that it was intended to make compensation for the goods in the future.

An article cannot be the subject of the offence of obtaining goods by false pretences unless it could have been the subject of theft at common law (a).

63. If a person is charged with obtaining goods by false pretences, and it is proved that he did in fact obtain the goods by means of the false pretences laid, he may be convicted of the charge on which he is tried, notwithstanding that the obtaining amounts in law to theft. Accordingly, if a person has once been acquitted of obtaining anything by false pretences, he cannot afterwards be charged with stealing on the same facts. A person cannot, however, be convicted on a charge of theft if the offence proved amounts only to obtaining by false pretences, and he may therefore be charged with obtaining the thing by false pretences on the same facts on which he may have been acquitted when charged with theft.

64. Theft of a thing on the body or in the immediate possession of the person from whom it is taken, if accompanied by violence or threats of injury, is called robbery.

The threats must be threats of injury to the person, property, or reputation of the person robbed, and must be such as would reasonably induce a fear of injury.

The violence or threats must be intentionally used for the purpose of overcoming or preventing resistance, or of extorting the thing stolen. Violence used merely for the purpose of obtaining possession of the thing, such as snatching a watch out of a pocket, is not sufficient to constitute robbery.

An assault with intent to rob is a similar offence; and a person charged with robbery may be convicted of an assault with intent to rob.

The following classes of things are not the subject of theft at common law:—

- (1) Things abandoned by the owner.
- (2) Land, and things permanently attached to land.
- (3) Title deeds, bonds, &c.
- (4) Wild animals (including game).
- (5) Base animals, such as dogs, ferrets, &c.

¹ But the stealing of plants and shrubs growing in gardens, &c., title deeds, and all animals which are usually kept in confinement, including dogs, has been made punishable by statute.

Ch. VII. **65.** Where the thing is not on the body or in the immediate possession of a person and violence or threats are used for the purpose of extorting it from him the offence is called extortion.

Extortion.

A somewhat similar offence is when threats or violence are used to induce a person to execute, make, accept, endorse, alter, or destroy any valuable security, with the intention of injuring or defrauding that or any other person.

Breaking and entering.

Burglary.

66. Offences closely allied to thefts and robbery are those of entering or breaking and entering a house with the intention of committing a felony (a). The latter offence if the house is a dwelling-house (b) and the entering and breaking is at night (c) is termed burglary.

There must in every case be an intention to commit a felony in the house entered.

A person is considered to "enter" a house as soon as he introduces into the house any part of his body or any instrument held in his hand for the purpose of intimidating any one in the house or of removing any goods; the introduction into the house of a housebreaking tool is not sufficient if it be merely part of the act of breaking into the house.

A person is considered to "break" a house—

- (a) if he breaks any part, internal or external, of the building itself, or
- (b) if he opens by any means whatever (d) any *closed* door, window, or other thing intended to cover openings to the house, or leading from one part of it to another, or
- (c) if he gets down the chimney, or
- (d) if he gains entrance to the house by threats, artifice, or collusion.

If a person having committed a felony (a) in a house breaks out of it he is guilty of the offence of breaking out, or, if the house is a dwelling-house (b) and the breaking out is at night (c), of burglary.

It is also an offence—

- (a) to be found by night (c) in possession of housebreaking tools unless a lawful excuse for such possession can be given;
- (b) to be found by night (c) armed with an offensive weapon with the intention of breaking into a building and committing felony (a) therein;
- (c) to be disguised at night (c) with the intention of committing felony (a);
- (d) to be found by night in any building with the intention of committing felony (a) therein.

Receiving stolen goods, &c.

67. The receiving with guilty knowledge of stolen goods or goods obtained by means of a criminal offence is itself an offence; as is also the taking of a reward for helping to the recovery of stolen property without using due diligence to bring the offender to trial.

The guilty knowledge of the receiver must be established; it is not enough to prove that he merely suspected the goods to have a tainted origin. And the knowledge must have existed at the moment of receiving; if he took them innocently no subsequent guilty knowledge will suffice. The fact that he bought them much

(a) As to what offences are felonies, see table at the end of the chapter.
 (b) A dwelling-house is any permanent building or separate part thereof in which the owner or tenant, or any one with their consent, habitually sleeps at night.
 (c) Night means the interval between nine at night and six in the morning.
 (d) This includes opening a shut window or door, but not pushing an open window or door further open.

below their value, or that he falsely denied his possession of them, **Ch. VII.** would be *evidence* of guilt.

A person is considered to receive the goods as soon as he obtains control over them.

If a person is found in possession of goods recently stolen and fails to give a reasonable account of how he came by them, he may be presumed to have stolen them, or to have received them knowing them to have been stolen.

68. The following are offences somewhat similar to theft and embezzlement and obtaining money under false pretences :— *Cheating, &c.*

- (1.) Obtaining money by false pretences by cheating at cards ;
- (2.) Fraudulently obtaining the execution of a valuable security, or affixing a name on any paper with a view to its being subsequently dealt with as a valuable security ;
- (3.) Cheating, by a deceitful practice affecting the public ;
- (4.) Conspiring to defraud ; that is an agreement by two or more persons to do an act with the intention of defrauding the public or any person or class of persons ; or to extort money or goods from any person ;
- (5.) Fraudulently obliterating any mark denoting the property of His Majesty in any stores.

(ix.) *Forgery; Perjury; Coinage Offences; Personation.*

69. Forgery consists in knowingly making a false document *Forgery.* which is on the face of it valid, with the intention to defraud or deceive (a). A false document does not mean a document which contains false statements, but a document which purports to be that which it is not.

A false signature to a genuine document, or a genuine signature to a false document, amount equally to forgery if the fraudulent intention is present.

A "document" means any paper, parchment, or other material used for writing or printing.

A document is considered to be a false document if any material part of it purports to be made by or on behalf of an existing person who has not authorised its making, or by or on behalf of a person altogether fictitious. A document is also considered to be false, though made by a person in his own name, if it is so made with the fraudulent intention that it should pass as being made by someone else. A document made by a person in his own name may also become a false document if it is wrongly dated as to the time or place of making it, where such a particular is material.

The making of a false document includes not only cases where the document is literally made by the offender, but also cases where the offender makes any material alteration in, addition to, or erasure from, a genuine document.

It is not essential, in order to constitute the offence of forgery, that the false document should be completed, or should be in such a form as would be binding in law ; though, if a person is charged with the forgery of any particular instrument, it must be shown that the document has such a resemblance to it as would be likely to deceive an ordinary person.

(a) See also A.A. 25.

Ch. VII. The fraudulent intention may be inferred from the document itself or proved by external evidence. The intention must be that either—

- (a) the document should be used or acted on as genuine; or
- (b) the actions of some person should be influenced by the belief that it is genuine.

The punishment for forgery varies very much according to the nature of the document forged, as will be seen by referring to the table at the end of the chapter.

Uttering
forged
documents.

70. It is an offence to utter forged documents with intent to defraud or deceive, that is to say, knowing a document to be forged to attempt to use, or cause any one else to use, it as though it were genuine.

The use of a false document, or any false representation or statement, in order to obtain any grant, increase, or payment of any pay or pension, or any privilege or advantage obtainable in pursuance of any warrant, order, or regulation of His Majesty or the Secretary of State, is a special offence (a).

Possession
of forged
notes, &c.

71. The mere purchase or possession of forged bank notes, and some similar documents (whether complete or not) with the knowledge that they are forged, is in itself an offence.

It is an offence to make, sell, or be in possession of any bank note paper or any instruments or contrivances for making bank notes and similar documents (b).

It is also an offence to demand, receive or obtain any property or money upon or by virtue of any forged instrument, knowing the same to be forged (c).

Perjury.

72. Perjury may shortly be defined as the giving of false evidence by a witness before a court of law.

The only cases of perjury which will come before courts-martial are those where the perjury has been committed before a court-martial, or before any court or officer authorised by the Army Act to administer an oath (d). Perjury before a civil court will usually be dealt with by the civil courts.

The witness must have been duly sworn by the court or officer, i.e., he must either have taken the oath or made an affirmation.

The false evidence must be an assertion as to some matter of fact, opinion, belief, or knowledge, which the witness does not believe to be true, or as to the truth of which *he knows* that he is ignorant.

The assertion must be as to some point which is material, i.e., it must be as to some point which affects, directly or indirectly, the probability of some question which is to be determined by the proceeding in the course of which it is given, or the credit of some witness giving evidence in the course of the proceeding.

The parts of the evidence alleged to be false should be set out in the charge, and in order to prove a charge of perjury it is not sufficient to call one witness only, as that would be merely setting oath against oath; but the evidence of such a witness must be corroborated either by the evidence of another witness, or by the proof of material and relevant facts concerning it.

(a) See also para. 75 below.

(b) See Forgery Act, 1913 (3 & 4 Geo. V, c. 27), ss. 8, 9, 10.

(c) Forgery Act, 1913 (3 & 4 Geo. V, c. 27), s. 7.

(d) See A. A. 29, 70 (5), and R.P. 124 (H).

The making of a false declaration in the cases specified in s. 142 of the Army Act is declared to be perjury, and subject to the same penalties. Ch. VII.

73. Coinage offences are numerous, but it is only necessary to make special mention of the following :— Coinage offences.

- (1.) Counterfeiting current gold and silver coin.
- (2.) Counterfeiting current copper coin.
- (3.) Counterfeiting foreign gold and silver coin.
- (4.) Counterfeiting foreign copper or mixed metal coin.

By "current coin" is meant coin coined in His Majesty's mints, and current in any part of His Majesty's dominions.

The offence is complete even though the counterfeit coin does not bear that degree of resemblance to the true coin which would induce persons to accept it as genuine. The offence is usually proved by finding coining tools in the accused's house, together with pieces of counterfeit coin.

The possession of such tools is also in itself an offence.

It is a separate offence to utter counterfeit current coin, or gold or silver foreign coin, that is to say, to pass, or attempt to pass, such coin as genuine knowing it to be counterfeit. Uttering.

The existence of such guilty knowledge must depend on the facts the case. The possession of other counterfeit coins, or proof that the accused had on previous occasions tried to pass counterfeit coins, would be strong evidence of such knowledge.

74. Clipping current gold and silver coin, and defacing any current coin are also offences. Clipping.

75. Under the False Personation Act, 1874, the personation of any person with the intention of fraudulently obtaining any property whatever is an offence. Personation.

By s. 142 of the Army Act a person is deemed guilty of personation who falsely represents himself to any military, naval, or civil authority to be a man in, or to be a particular man in the regular, reserve, or auxiliary forces (a).

(x.) *Malicious Injury to Property.*

76. Numerous offences come under the category of malicious injuries to property. Malicious injury to property.

The essence of the offence is injury to the property of another; it is immaterial whether the offender is himself benefited by the act or not.

Such acts are offences if done unlawfully and maliciously.

A person is considered to cause an injury unlawfully and maliciously if he wilfully causes it without any lawful excuse; i.e. if he causes it by an act which he must know will probably cause it, or is reckless whether he causes it or not, and if he has not either a legal right to act as he does, or a *bond fide* and reasonable belief that he has such a right. Generally speaking the act itself justifies a presumption of malice until the contrary is shown, e.g., that it was due to negligence or accident. For instance a deliberate trespass on land whereby substantial injury is caused to crops amounts to malicious injury to property. But the charge must allege that the injury was caused maliciously. Unless the evidence clearly shows that the damage was caused maliciously, a charge of malicious injury should not be laid.

77. Of the various instances of malicious injury the most important is arson.

(a) As to the punishment for this offence, see the section and note thereon.

Ch. VII. Arson consists in unlawfully and maliciously setting fire to—

- any building, or
- anything within a building, in such circumstances that if the building were thereby set fire to, this would be arson of the building, or
- any mine, or
- any ship, or
- any stack of cultivated vegetable produce, or of hay, heath, furze, or fern, or of turf, peat, coals, charcoal, wood, or bark, or any steer of wood or bark, or
- any crop whether cut or standing, or
- any wood, heath, furze or fern.

The sending of a letter threatening to commit arson is also an offence.

Other examples of malicious injury.

78. As other examples of malicious injury may be mentioned the unlawful use of explosives, damage to ships, interference with buoys, destruction of canal and harbour works and bridges, obstruction of railways, injury to telegraphs, and the wounding of cattle or other animals^a).

(xi.) *Miscellaneous Offences.*

Bigamy.

79. Bigamy is committed by a person who, being already married to one person, goes through the form of marriage with another, or who goes through the form of marriage with another person knowing that person to be married to some one else. The law does not include the case of a person marrying a second time whose husband or wife has been continually absent from such person for seven years then last past, and has not been known by that person to be living within that time; the burden of proving such knowledge is upon the prosecutor when the fact that the parties have been continually absent for seven years has been proved. It is also a good defence if the accused can show that he or she had reasonable grounds for believing that his or her wife or husband was dead at the time of the second marriage.

Treason.

80. The only forms of treason which need here be mentioned are—

- (1.) Levying war against the Sovereign in any of His dominions.
- (2.) Aiding the enemies of the Sovereign.

Thus, an officer who betrays his trust, or a soldier who deserts in the field and joins the enemy, is guilty of high treason independently of his military offence.

Certain other acts of treason (namely, compassing to levy war against the King, and compassing to move any foreigner to invade the King's dominions), can, under an Act of 1848, be also treated as felonies; these acts are commonly known as "treason felonies," and are so described in s. 41 of the Army Act.

Being at large whilst sentenced to penal servitude.

81. The mere fact of a criminal sentenced to penal servitude being at large within any part of His Majesty's dominions during his term of penal servitude without some lawful cause is an offence.

Escape.

82. Offences relating to escape from civil custody would probably never be tried by court-martial, and it seems only requisite to observe here that—

(a) The animal must be one which is the subject of theft at common law (as to which see note to para. 62), or one which is ordinarily kept in a state of confinement or for some domestic use.

if a person assists any alien enemy who is a prisoner of war within His Majesty's dominions, whether in confinement or on parole, to effect his escape; or
 if a person (being a British subject) on the high seas assists any such prisoner of war who has escaped from His Majesty's dominions in his escape towards any other country;

he is, in either case, guilty of an offence.

83. It is an offence either—

- (a) To conspire to accuse any one falsely of a crime, or to do anything to obstruct the course of justice; or
- (b) To try to dissuade witnesses from giving evidence, in order to obstruct the course of justice; or
- (c) To obstruct the execution of any legal process; or
- (d) To conceal or procure the concealment of a felony (a); or
- (e) To enter into an agreement for valuable consideration to refrain from prosecuting a person for a felony (a), or to show favour to the accused in any such prosecution.

Offences
relating to
the obstruc-
tion of
justice.

(a) As to what offences are felonies, see table at end of chapter.

TABLE OF OFFENCES AND PUNISHMENTS.

Description of Offence.	Paragraph in which described.	Whether Felony or Misdemeanour.	Maximum Penalty (a).
Abandonment. See "Children."			
Abduction— Of unmarried girl under 16	40	Misdemeanour	Imprisonment for 2 years, with or without hard labour.
Of unmarried girl under 18, with intent that she may be married to or carnally known by a man.	40	"	Imprisonment for 2 years, with or without hard labour.
Of woman, by force, with intent that she shall be known by a man.	39	Felony	Penal servitude for 14 years (b).
Agreement by two or more persons to try to induce a woman to commit adultery, &c., or to take a woman out of custody of her parents in order to marry her to any person without their consent.	40	Misdemeanour	Imprisonment for 2 years, with or without hard labour.
Abortion— Procuring abortion	41	Felony	Penal servitude for life (b).
Supplying poison, &c., to be used for procuring abortion ..	41	Misdemeanour	Penal servitude for 5 years (b).
Accessory— Before the fact	17, 18, 19, 21	Felony or misdemeanor, according to nature of offence.	Same penalty as may be awarded for the offence.
After the fact (if offence is a felony)	22	Felony	Imprisonment for two years with or without hard labour, or, if the offence is murder, penal servitude for life.
Arson— Arson	77	"	Penal servitude for 14 years (b) (or, in a few cases, for life).
Letter threatening to commit arson	77	"	Penal servitude for 10 years (b).
Attempt to commit arson	77	"	Penal servitude for 7 years (b).

Common assault	34	Misdemeanour	Imprisonment for 1 year, with or without hard labour.
With intent to commit felony	35	"	Imprisonment for 2 years, with or without hard labour.
With intent to resist arrest, &c.	35	"	Imprisonment for 2 years, with or without hard labour.
On peace officer in execution of duty	35	"	Imprisonment for 2 years, with or without hard labour.
Occasioning actual bodily harm.. .. .	35	"	Penal servitude for 5 years (b).
Unlawful wounding	35	"	Penal servitude for 5 years (b).
Unlawful wounding } with intent to do grievous			
Shooting or attempting to shoot } bodily harm, &c.	35	Felony	Penal servitude for life (a).
Indecent assault on female	36	Misdemeanour	Imprisonment for 2 years, with or without hard labour.
Indecent assault on male, or assault with intent to commit sodomy.	36	"	Penal servitude for 10 years (b).
See also "Robbery."			
Attempt to commit an offence	23	"	Imprisonment for 2 years.
See also "Arson," "Assault (attempt to shoot)," "Murder," "Carnal knowledge," "Indecency, acts of," "Procurement," "Sodomy,"			
Bigamy	79	Felony	Penal servitude for 7 years (b).
Breaking and Entering, Breaking out. See "House-breaking."			
Burglary	66	"	Penal servitude for life (b).
See also "Housebreaking."			

(a) See A. A. 41 (5). This column states in the case of each offence the maximum "punishment assigned for such offence by the law of England," except that civil courts can (as a court-martial cannot: A. A. 68 (2)) award in case of certain offences more than two years' imprisonment. It must be observed that in a few cases a heavier punishment than the punishment stated in this column can be inflicted by sentencing the offender to "such punishment as might be awarded to him . . . in respect of an act to the prejudice of good order and military discipline."

(b) The minimum term of penal servitude which can be awarded by a civil court is 3 years. Where penal servitude may be awarded, a civil court may, as an alternative, award 2 years' imprisonment, with or without hard labour.

Description of Offence.	Paragraph in which described.	Whether Felony or Misdemeanour.	Maximum Penalty.
Carnal Knowledge—			
Of girl under 13 ..	38	Felony	Penal servitude for life (a).
Of girl under 16 but over 13 ..	38	Misdemeanour	Imprisonment for 2 years, with or without hard labour.
Attempt to have carnal knowledge of girl under 13 ..	38	"	Imprisonment for 2 years, with or without hard labour.
Allowing girl under 16 to resort to or be on premises for the purpose of being carnally known by a man.	38	Misdemeanour; if girl under 13, felony.	Imprisonment for 2 years, with or without hard labour; if girl under 13, penal servitude for life (a).
| Allowing girl under 16 to frequent brothels, &c. .. See also "Abduction," "Disorderly houses," "Procuration," "Rape."	38	Misdemeanour	Imprisonment for 6 months.
Cheating—			
Cheating at cards, &c. ..	68 (1)	"	Penal servitude for 5 years (a).
Obtaining execution of valuable security, &c. ..	68 (2)	"	Penal servitude for 5 years (a).
Deceiving the public ..	68 (3)	"	Imprisonment for 2 years, with or without hard labour.
Conspiring to defraud ..	68 (4)	"	Imprisonment for 2 years, with or without hard labour.
Obliterating mark on public stores ..	68 (5)	Felony	Penal servitude for 7 years (a).
Children—			
Ill-treatment of child ..	46	Misdemeanour	Imprisonment for 2 years, with or without hard labour, and a fine of £100, or either of such penalties.
Abandonment or exposure of child ..	47	"	Penal servitude for 5 years (a).
Concealment of birth ..	48	"	Imprisonment for 2 years, with or without hard labour.
Clipping. See "Coinage."			

Coinage—			
Counterfeiting current gold and silver coins.	73	Felony	Penal servitude for life (a).
Counterfeiting current copper coins	73	"	Penal servitude for 7 years (a).
Counterfeiting foreign gold and silver coins	73	"	Penal servitude for 7 years (a).
Counterfeiting foreign copper coins	73	Misdemeanour	Imprisonment for 1 year, or, if the offender has been previously convicted of the same offence, penal servitude for 7 years.
Uttering counterfeit current coin	73	"	Imprisonment for 1 year, with or without hard labour, or, if the offender at the time of the uttering has any other such coin in his possession, or if he utters another such coin within 10 days, for 2 years, with or without hard labour.
Uttering counterfeit gold or silver foreign coin	73	"	Imprisonment for 6 months, with or without hard labour; for a second offence, imprisonment for 2 years, with or without hard labour, for a subsequent offence, penal servitude for life.
Possession of three or more counterfeit current coins with intention of uttering them.	73	"	Penal servitude for 5 years (a) if the coins are gold or silver; imprisonment for 1 year, with or without hard labour, if the coins are copper.
Possession of coining tools	73	Felony	Penal servitude for life, or 7 years, according as the coin is—(1) current or foreign gold or silver coin, or (2) current copper coin.
Clipping current gold and silver coins	74	"	Penal servitude for 14 years (a).
Defacing any current coin	74	Misdemeanour	Imprisonment for 1 year, with or without hard labour.
Concealment of Birth. See "Children." Conspiracy. See "Abduction," "Cheating," "Obstruction of Justice."			

(a) The minimum term of penal servitude which can be awarded by a civil court is 3 years. Where penal servitude may be awarded, a civil court may, as an alternative, award 2 years' imprisonment, with or without hard labour.

H

Description of Offence.	Paragraph in which described.	Whether Felony or Misdemeanour.	Maximum Penalty.
Dangerous Acts—			
Use of explosives.. ..	45 (1)	Felony	Penal servitude for 14 years (a), or, if the explosive is used directly for causing the injury, or if a person is injured by the explosion, for life. Penal servitude for 5 years (a). Penal servitude for 10 years (a).
Poisoning with intent to injure.. .. Poisoning if life endangered or grievous bodily harm inflicted thereby.	45 (2) 45 (3)	Misdemeanour Felony	Penal servitude for 5 years (a). Penal servitude for 10 years (a).
Furious driving, racing, or wilful neglect by person in charge of vehicle causing bodily harm.	45	Misdemeanour	Imprisonment for 2 years, with or without hard labour.
Disguise at Night —Being disguised at night with intention of committing felony.	66	"	Penal servitude for 5 years, or, for second offence, 10 years (a).
Disorderly Houses —Keeping of disorderly house	44	"	Imprisonment for 12 months, with or without hard labour, and with or without a fine.
Embezzlement—			
Embezzlement Fraudulently converting chattels, &c., of which person has control by virtue of appointment in public service.	59 61	Felony "	Penal servitude for 14 years (a). Penal servitude for 14 years (a).
Entering. See "Housebreaking."			
Escape—			
Being at large whilst sentenced to penal servitude	81	"	Penal servitude for life (a).
Assisting alien enemy to escape	82	"	Penal servitude for life (a).
Assisting prisoner of war who has escaped from His Majesty's dominions to escape towards another country.	82 82	"	Penal servitude for life (a).
Explosives. See "Dangerous Acts."			
Extortion—			
Extortion	65	"	Penal servitude for 5 years (a), or, if threat in writing, for life.
Extortion by means of threats to accuse person of offence punishable with death or penal servitude or any infamous offence.	65	"	Penal servitude for life (a).
Inducing person by threats to execute, &c., a valuable security.	65	"	Penal servitude for life (a).

False Declaration. See "Perjury."			
False Pretences—			
Obtaining any chattel, money, or valuable security by ..	62	Misdemeanour	Penal servitude for 5 years.
Fraudulently inducing person to execute valuable security..	68	"	Penal servitude for 5 years.
Fraudulent misappropriation of property	56	"	Penal servitude for 7 years.
Forgery—			
Forgery, where the crime is not made felony by statute ..	69	"	Imprisonment for 2 years.
Forgery of bank note or endorsement thereon, or of a deed, bond, or signature of attesting witness thereto, or testamentary instrument, or any document bearing the stamp or impression of one of the Great Seals of State	69	Felony	Penal servitude for life (a).
Forgery of any saleable security, document of title to land or goods, power of attorney, policy of insurance, charter party or register of births, marriages or deaths.	69	"	Penal servitude for 14 years.
Forgery of any document of or belonging to any Court of Justice.	69	"	Penal servitude for 7 years.
Demanding property on forged instrument	71	"	Penal servitude for 14 years.
Making or having in possession paper or implements for forgery.	71	"	Penal servitude for 7 years.
Uttering forged documents	70	Felony or misdemeanor, according as forging the document is felony or misdemeanor	The same penalty as if the offender had forged the document.
Use of false documents, &c., to obtain grant, &c., in pursuance of Royal Warrant, &c.	70	Misdemeanour	Imprisonment for 2 years, with or without hard labour.
High Treason. See "Treason."			
Housebreaking—			
Entering dwelling-house at night	66	Felony	Penal servitude for 7 years (a).
Breaking and entering a dwelling-house by day, or a school-house, shop, warehouse, counting-house, or place of divine worship by day or night.	66	"	Penal servitude for 7 years (a); or if felony committed, 14 years; or if felony committed in place of divine worship, for life.

(a) The minimum term of penal servitude which can be awarded by a civil court is 3 years. Where penal servitude may be awarded, a civil court may, as an alternative, award 3 years' imprisonment, with or without hard labour.

Description of Offence.	Paragraph in which described.	Whether Felony or Misdemeanour.	Maximum Penalty.
Housebreaking — <i>continued</i> .			
Breaking out from dwelling-house by day, or from school-house, shop, warehouse, or counting-house by day or night.	66	Felony	Penal servitude for 14 years (a).
Breaking out from place of divine worship by day or night....	66	"	Penal servitude for life.
Possession of housebreaking tools by night	66	Misdemeanour	} Penal servitude for 5 years, or, for second offence, 10 years (a).
Possession of offensive weapons with intention of breaking into house.	66	"	
Being found by night in building with intention of committing felony therein.	66	"	
See also "Burglary," "Disguise at night."			
Indecency —Any of the acts of indecency mentioned in para. 43, or an attempt to commit acts of gross indecency with another male person.	43	"	Imprisonment* for 2 years, with or without hard labour.
See also "Assaults."			
Malevolent Injury to Property —			
Where injury exceeds £5	76	"	Imprisonment for 2 years, with or without hard labour; or if offence committed between 9 p.m. and 5 a.m., penal servitude for 5 years (a).
Where injury does not exceed £5	76	"	Imprisonment for 2 months, or a fine of £5 in addition to a sum not exceeding £5 to be paid to person whose property is injured. Penal servitude for 5 years (a).
Damage to trees and shrubs if growing in grounds adjoining dwelling-house, or if damage exceeds £5.	76	Felony	Penal servitude for 7 years (a).
Damage to ships	78	"	Penal servitude for 7 years (a).
Interference with buoys....	78	"	Penal servitude for life (a).
Destruction of canal works, &c.	78	"	Imprisonment for 2 years, with or without hard labour.
Obstruction of railways	78	Misdemeanour	

Injury to telegraphs See also "Dangerous Acts (Explosives)."	78	"	Imprisonment for 2 years, with or without hard labour.
Manslaughter	52	Felony	Penal servitude (b).
Murder	50	"	Death (no alternative) (b).
Attempt to murder	54	"	Penal servitude for life (a).
Sending or delivering letter threatening to murder	51	"	Penal servitude for 10 years (a).
Conspiracy to murder	55	Misdemeanour	Penal servitude for 10 years (a).
See also "Accessory after the Fact."			
Neglect. See "Children," "Servants."			
Obstruction of Justice —Any offence described in para. 83. See also "Perjury."	83	"	Imprisonment for 2 years, and, in the case of the offence mentioned in para. 83 (a), with or without hard labour.
Obtaining Goods under False Pretences. See "False Pretences."			
Perjury —Perjury and making false declaration under s. 142 of the Army Act.	72	"	Penal servitude for 7 years (a).
Personation —Personation with intention of fraudulently obtaining property.	75	Felony	Penal servitude for life (a).
Poison. See "Abortion," "Dangerous acts."			
Procurement —Procuring or attempting to procure woman or girl under 21 to have unlawful carnal connection	39	Misdemeanour	Imprisonment for 2 years, with or without hard labour, and whipping.
Rape	37	Felony	Penal servitude (b).
Receiving Stolen Goods. See "Theft."			
Robbery	64	"	Penal servitude for 14 years (a), or if actual violence used, or offender is armed with offensive weapon or accompanied by any other person, penal servitude for life (a) and three floggings.

(a) The minimum term of penal servitude which can be awarded by a civil court is 3 years. Where penal servitude may be awarded, a civil court may, as an alternative, award 2 years' imprisonment, with or without hard labour.

(b) The punishment is regulated by s. 41 of the Army Act.

Description of Offence.	Paragraph in which described.	Whether Felony or Misdemeanour.	Maximum Penalty.
Robbery—continued.			
Assault with intent to rob	Felony	Penal servitude for 5 years (a), or if offender accompanied by any other person, penal servitude for life (a) and three floggings. Penal servitude for 5 years (a).
Servants—Neglect of	Misdemeanour	Penal servitude for life (a).
Sodomy—			
Sodomy	Felony	Penal servitude for life (a).
Attempt to commit sodomy	Misdemeanour	Penal servitude for 10 years (a).
See also "Assault."			
Theft—			
Theft of thing the subject of theft at common law (c).			
Theft by a bailee	Felony	Penal servitude for 5 years (a), or if after previous conviction for felony, 10 years.
Theft of dogs or fraudulently taking reward to recover stolen or lost dog.	"	Penal servitude for 5 years (a), or if after previous conviction for felony, 10 years.
Theft of dogs or fraudulently taking reward to recover stolen or lost dog.	Misdemeanour (d)	Imprisonment for 6 months, with or without hard labour, or a fine of £20 in addition to the value of the dog, or, for second offence, imprisonment for 18 months, with or without hard labour.
Theft by servants of property in possession of master.			
Theft of trees, shrubs, &c., wheresoever growing, of value of 1s., or upwards.		Felony Felony (e)	Penal servitude for 14 years (a). Fine not exceeding £5 over and above value of property stolen, or for second offence imprisonment for 1 year with or without hard labour, or for third offence penal servitude for 5 years, or, where a previous conviction for felony, 10 years (a). Penal servitude for 14 years (a).
Theft from dwelling-house (f) at night, if value of thing stolen is £5, or thief frightens any one in the house by menaces or threats.		Felony	

Receiving stolen goods— If offence by which the thing was improperly obtained is a felony, at common law, or under the Larceny Act, 1861.	67	"	Penal servitude for 14 years (a), or in case of stolen or embezzled letter or letter bag, or anything known to have been sent by post, for life.
If offence by which the thing was improperly obtained is a misdemeanour under the Larceny Act, 1861.	67	Misdemeanour	Penal servitude for 7 years (a).
Taking reward to recover stolen property, &c.	67	Felony	Penal servitude for 7 years (a).
Threatening Letter. See "Arson," "Extortion," "Murder."			
Treason—			
Treason	80	Treason	Death (b).
Treason felony	80	Felony	Penal servitude (b).
Unlawful Wounding. See "Assault."			
Uttering. See "Coinage," "Forgery."			

(a) The minimum term of penal servitude which can be awarded by a civil court is 3 years. Where penal servitude may be awarded, a civil court may, as an alternative, award 2 years' imprisonment, with or without hard labour.

(b) The punishment is regulated by s. 41 (1) (3) of the Army Act.

(c) As to what are not the subjects of thefts at common law, see note to para. 62.

(d) A first offence of *dog stealing* is not an indictable misdemeanour, and can only be dealt with summarily before justices.

(e) A first or second offence of this kind is not a felony, and can only be dealt with summarily before justices.

(f) As to meaning of "dwelling-house" and "night," see notes on para. 66.

CHAPTER VIII.

POWERS OF COURTS OF LAW IN RELATION TO
COURTS-MARTIAL AND OFFICERS.*Introductory.*

Courts-martial and officers amenable for acts done without or in excess of jurisdiction.

1. The members of courts-martial and officers, in the exercise of individual authority are, like the inferior civil courts and magistrates, amenable to the superior civil courts for injury caused to any person by acts done either without jurisdiction or in excess of jurisdiction; although there is not, in the ordinary sense of the word, any appeal from the decision of a court-martial or from the order of an officer. Such injuries will equally be inquired into whether they affect the person, property, or character of the individual injured; and whether the individual injured is a civilian or is subject to military law.

Exceptions in case of injuries affecting only military position.

2. There is, however, this material exception in the case of a person subject to military law, that if the injury affects only his military position or character, a court of law will not interfere. He has agreed to subject himself to military law in those respects, and must take the consequences. Thus, the dismissal of an officer from the service, the deprivation of rank, or the reduction or deprivation of military pay, will not be remedied by a court of law (a).

Meaning of acting without jurisdiction.

3. The jurisdiction of a tribunal may be limited by conditions as to its constitution, or as to the persons whom or the offences which it is competent to try, or by other conditions which the law makes essential to the validity of its proceedings and judgments. If the tribunal fails to observe these essential conditions, it acts without jurisdiction. An individual officer acts without jurisdiction if he exceeds the limits of the authority conferred on him, whether by Act of Parliament, the custom of the service or lawful delegation from a superior officer.

Illustrations of acting without jurisdiction.

4. Thus a court-martial will act without jurisdiction if it is not properly constituted; for instance, if the number of members is below the legal minimum, or if the members of a general court-martial have not held commissions for the three years preceding the day of assembling the court, or if the president is not of the proper rank, or has not been properly appointed. For the above reason it is directed by the Rules of Procedure that a court-martial, before acting, shall ascertain that it is properly constituted, a provision which, as will be seen, is required for the protection of the members themselves (b).

Further illustrations.

5. An officer who without due authority confirms the finding and sentence of a court-martial, and a commanding officer who punishes a warrant officer, will also act without jurisdiction. Again, a court-martial or officer dealing with a person who is not amenable to military law, as if he were so amenable, will act without jurisdiction (c). So, too, if a court-martial convicts the

(a) See *Poe's case*, below, para. 12; *Mansergh's case*, below, paras. 18-20; and *Roberts' case*, below, paras. 21, 22; and *Re Tufnell* (note to para. 22).

(b) See R.P. 22.

(c) See *Comyn v. Sabine*, and other cases, below, paras. 52, *seq.*

accused of an offence which is not an offence under the Army Act (or (save as provided by s. 56 of the Army Act) of an offence with which he was not charged, the court acts without jurisdiction. Where the offence is not properly charged, the accused may be held not to have been charged with the offence at all; but the proceedings of military courts will not be scrutinised with the same strictness as those of inferior civil courts. Ch. VIII.

6. The result of acting without jurisdiction is that the act is void, and each member of the court-martial, or the officer who so acted, is liable to an action for damages. Result of acting without jurisdiction.

7. The consequences of exceeding the bounds of jurisdiction are the same as those of acting without jurisdiction. For instance, when a court having power to award two years' imprisonment, sentenced the accused to fifteen years' imprisonment, the sentence being in excess of that which the court was authorised to pass, was held to be void, and the members of the court were held liable to an action for damages (a). Other cases of this class arise where jurisdiction is exercised with cruelty or oppression amounting to an abuse of it. A power to award summary punishment or imprisonment does not justify a court or officer in causing the punishment to be inflicted in a barbarous manner, or with circumstances of undue severity; and in such cases, though there is a jurisdiction, yet the excuse for the act of the court or officer, which would otherwise exist by reason of the jurisdiction, is taken away by reason of the excess in the mode of exercising it (b). Excess jurisdiction.

8. The proceedings by which the courts of law supervise the acts of courts-martial and of officers may be criminal or civil. Criminal proceedings take the form of an indictment for assault, false imprisonment, manslaughter, or even murder. Civil proceedings may either be preventive, i.e., to restrain the commission or continuance of an injury; or remedial, i.e., to afford a remedy for injury actually suffered. Broadly speaking, the civil jurisdiction of the courts of law is exercised as against the tribunal of a court-martial by writs of prohibition or certiorari; and as against individual officers by actions for damages. A writ of habeas corpus also may be directed to any officer, governor of a prison, or other, who has in his custody any person alleged to be improperly detained under colour of military law. The writs of prohibition, certiorari, and habeas corpus will be first discussed, then the subject of actions for damages, and lastly, that of liability to criminal proceedings. Modes of interposition of courts of law.

(i.) *Writ of Prohibition.*

9. The writ of prohibition issues out of the High Court of Justice to any inferior court, when such inferior court concerns itself with any matter not within its jurisdiction, or when it transgresses the bounds prescribed to it by law. The writ forbids the inferior court to proceed further in the matter, or to exceed the bounds of its jurisdiction; and if want of jurisdiction in the inferior court be once shown, any person aggrieved by the usurpation of jurisdiction is entitled to the writ as a matter of right. Definition of the writ of prohibition.

10. The writ will not be granted for irregularity in the proceedings or wrong decision of the merits; nor when it can be of no use, as, for example, after a sentence has been carried into execution; nor will it issue on the ground that the facts which establish When prohibition will not issue.

(a) *Frye v. Ogle*, below, para. 41.

(b) The question whether an officer is liable to an action for ordering an arrest or prosecution maliciously and without probable cause, will be considered separately. See below, paras. 67-74.

Ch. VIII. a military offence disclose at the same time a greater offence (e.g. high treason) cognisable by the civil courts (a).

Grant v. Gould, 1792.

11. Applications for a prohibition to restrain courts-martial have hitherto been few, and uniformly unsuccessful. The earliest reported case is that of *Grant v. Gould* (b). In 1792 Serjeant Grant of the 74th Regiment was tried by court-martial on a charge of having persuaded two drummers of the Coldstream Guards to desert, and enlist in the service of the East India Company. He was convicted and sentenced to be reduced to the ranks, and to receive one thousand lashes. Grant moved for a prohibition to prevent the execution of this sentence on the ground that he was not a soldier and therefore not liable to be tried by court-martial, that evidence was improperly admitted and rejected, and that he was convicted of an offence not specifically charged. The court, being of opinion that at most an error in the proceedings had been made, refused the writ. At the same time, Lord Loughborough, in delivering the opinion of the court, affirmed the general principle that "Naval Courts-Martial, Military Courts-Martial, Courts of Admiralty, Courts of Prize, are all liable to the controlling authority which the courts of Westminster Hall have from time to time exercised for the purpose of preventing them from exceeding the jurisdiction given to them."

Poe's case, 1832.

12. The case of Lieutenant Poe (c), which occurred in 1832, is the authority for the proposition that a prohibition will not issue after sentence confirmed and executed. Lieutenant Poe, being a passenger on board the ship *Cæsar* on her way to England, was accused of stealing a 5*l.* note and certain articles of wearing apparel from his servant's trunks, which were kept in his (Poe's) cabin. On investigation of the charge by the captain of the ship and other officers on board, Lieutenant Poe was expelled by the officers and passengers on board from their table and society during the remainder of the voyage. Lieutenant Poe never took any measures to vindicate his honour, and was consequently tried for conduct to the prejudice of good order and military discipline, found guilty, and sentenced to be dismissed the service. The sentence was confirmed by the King and carried into execution; and an application on behalf of Lieutenant Poe that a prohibition might issue "to the Judge-Martial and Advocate-General of his Majesty's forces" to restrain the execution of the sentence was refused, Chief Justice Denman observing that even supposing the case of *Grant v. Gould* to furnish some argument that a writ of this nature might be directed to him (the Judge-Advocate) before execution of the sentence, still it was impossible to discover what he could be required to abstain from after execution.

M'Carthy's case, 1866.

13. The later case of Serjeant M'Carthy shows that a prohibition will not issue merely because the evidence given in support of a military charge discloses a higher civil offence. In 1866 Serjeant M'Carthy (d) was tried by a general court-martial on a charge of "coming to the knowledge of an intended mutiny, and not revealing such knowledge to his superior officers." The evidence

(a) As to the general law, see the exhaustive opinion of the Judges in *Mayor of London v. Cox*, L. R., 2 H. L., 229, and the cases there cited. The right to a writ of prohibition has frequently been considered with reference to the Ecclesiastical Courts, and it is clear that the courts of law will not entertain questions of their practice, so long as they do not exceed their jurisdiction.

(b) 2 H. Blackstone's Reports, 69. McArthur on Courts-Martial, 4th edition, l. 120.

(c) *Re Poe*, 5 Barn. and Adol., 681.

(d) 14 W. R. (Ir.), 918.

given implicated him in the Fenian conspiracy, and showed **Oh. VIII.** endeavours on his part to induce soldiers to become members of that conspiracy, and various other acts amounting to overt acts of treason. After the close of the prosecution the court-martial was adjourned in order to permit the prisoner to apply to the Court of Queen's Bench (Ireland) for a writ of prohibition on the ground that the evidence establishing the military offence disclosed also that the prisoner was guilty of treason, in which case a court-martial would have no jurisdiction. The court held that the military offence does not merge in the greater offence, and declined to accede to the application.

14. Although the writ of prohibition has never actually been issued to a court-martial, there seems no doubt that it might issue in a proper case; as, for example, if a court-martial were proceeding to try a person not subject to military law, or had passed a sentence which they had no power whatever to pass. **No example of issue of prohibition to a court-martial.**

15. The question whether a writ of prohibition would issue to an officer exercising individual authority does not seem ever to have been raised. **To officer.**

16. Disobedience of a prohibition is a contempt of court, and as such punishable by fine and imprisonment at the discretion of the court which granted the writ. **Dis-obedience of prohibition.**

(ii.) *Writ of Certiorari.*

17. Certiorari is a writ issuing (in most cases) out of the High Court of Justice to the judges or officers of inferior courts, and commanding them to certify and return the record of a matter, *e.g.*, a conviction or order, depending before them, to the end that more sure and speedy justice may be done. If the conviction or order of the inferior court is found to be bad in law, it will be quashed by the High Court. **Definition of the writ of certiorari.**

In ordinary cases the writ is issued on the application of the person aggrieved almost as a matter of course, unless he has by his conduct precluded himself from taking an objection (*a*). In the case of a court-martial sentence, the writ will issue only when the rights affected by the judgment of the court are civil rights, and the court is acting without jurisdiction: it will not issue when the rights affected are dependent on military status and military regulations (*b*). **When certiorari will issue.**

18. Major Mansergh's case was as follows:—In January, 1858, Major (then Captain) Mansergh was on duty with his regiment, the 6th Foot, at Calcutta, under the command of Colonel Barnes. In February, 1858, Brevet-Major Mansergh was gazetted to a majority in the 15th Foot, at that time stationed in England. Notice of this appointment was transmitted to India and notified in general and regimental orders in the usual way, after which notification Major Mansergh ceased, according to the rules of the army, to belong to the 6th Foot. The latter regiment was about to start on active service, when Colonel Barnes informed Major Mansergh of his promotion and desired him to hand over his company to another officer, which he did accordingly. **Mansergh's case, 1858.**

19. Subsequently Major Mansergh, conceiving that the notification of his appointment to the 15th Foot had been obtained by Colonel Barnes for the purpose of excluding him from active service wrote **His trial by court-martial.**

(a) *R. v. Justices of Surrey*, L. R., 5 Q. B. 467, and see on the general law *Colonial Bank v. Willan*, L. R., 5 P. C. 417.

(b) *Re Mansergh*, 1 Best & Smith, 400; 30 L. J. (N.S.) Q. B. 296. *Re Roberts*, reported in "Times," 11th June, 1879.

Ch. VIII. a letter to the Colonel expressing that view in strong language. For this he was placed under arrest, and subsequently tried by court-martial on a charge of having addressed to his superior officer a letter containing highly offensive and insulting language, such conduct being grossly insubordinate, highly unbecoming a commissioned officer, and subversive of military discipline. Major Mansergh was found guilty and sentenced to be dismissed the army, and the proceedings having been confirmed, were sent to England and deposited with the Judge Advocate-General. Major Mansergh then applied to the Court of Queen's Bench for a rule calling on the Judge Advocate-General to show cause why certiorari should not issue to bring up, in order that it might be quashed, the record of his conviction; on the ground that after his promotion he ceased to be within the command of the Commander-in-Chief in India, and that consequently the court-martial had no jurisdiction to try him.

Refusal of
application
for certio-
rari.

20. The Court refused the application—Chief Justice Cockburn observing, "I quite agree that when the civil rights of a person in military service are affected by the judgment of a military tribunal in pronouncing which the tribunal has either acted without jurisdiction or has exceeded its jurisdiction, this court ought to interfere to protect these civil rights, *e.g.*, where the rights of life, liberty, or property are involved, although I do not know whether the latter case could occur. Here, however, there was nothing of the sort, the only matter involved was the military status of the applicant—a thing which depends entirely on the Crown, seeing that every person who enters into military service engages to be entirely at the will and pleasure of the Sovereign. Then there is this additional fact that these proceedings originated abroad in a country the tribunals of which are not subjected to our jurisdiction. It is contended that because we have the record of the proceedings in the country we have jurisdiction over it. Assuming that for a moment, yet when we look at the particular nature of the case before us, we see that the military status of the applicant alone is affected, and consequently if he had just cause of exception to the act of the tribunal by which he was sentenced, he might have appealed to the Queen to reconsider the matter with the advice of her Judge Advocate. For these reasons I am of opinion that in this case we have no jurisdiction to grant a certiorari; besides which, certiorari being a discretionary writ, we most certainly ought not in the exercise of our discretion to grant it if we had the jurisdiction." Three other judges concurred, and the application was refused.

Roberts's
case, 1879.

21. A similar application in June, 1879, by Captain Francis Roberts, of the 94th Regiment, was equally unsuccessful. Captain Roberts founded his application on the ground that the sentence of the court-martial dismissing him from the service was invalid, in that it simply sentenced him to be dismissed the service without stating the cause of dismissal. The charge against Captain Roberts appears to have been twofold:—(1) That he had been guilty of scandalous conduct unbecoming an officer and gentleman in having written and sent to certain persons statements wilfully false and malicious respecting Colonel Lord John Taylour, his commanding officer. (2) That he had been guilty of conduct prejudicial to good order and military discipline in writing the statements referred to, which were charged simply as false. An affidavit was filed, by Mr. Roberts stating that since the sentence he had been occupied in various attempts to obtain a revision of the sentence. Google

22. It was attempted to distinguish this case from that of *Ch. VIII. Mansergh*, on the ground that here civil rights were indirectly affected, as Mr. Roberts would lose his rights to pension or retiring allowance, and would lose the sum he had paid for purchase. But it was at once pointed out by the Chief Justice and Mr. Justice Mellor, that the rights referred to were purely military in their nature and dependent on military status and military regulations, and *Mansergh's case* was considered decisive against granting the application (a).

No distinction between his case and *Mansergh's case*.

(iii.) *Writ of Habeas Corpus.*

23. Any person who is detained in what he conceives to be illegal custody by order of a court-martial or other military authority, can apply for a writ of *habeas corpus*. This writ is the most celebrated writ in English law, being the great remedy for a person wrongfully deprived of his liberty. There are varieties of it which are employed for merely removing prisoners from one court to another for the better administration of justice; but by far the most important species is that which affords the above remedy, and is known as *habeas corpus ad subjiciendum*. It is addressed to the person who detains another in custody, and commands him to produce the body of the prisoner to undergo and receive whatever the judge or court awarding the writ shall consider in that behalf. It issues out of the High Court of Justice, and into all parts of the King's dominions, save as provided by 25 & 26 Vict. c. 20, which enacts that no writ of *habeas corpus* shall issue out of any of the courts in England into any colony or foreign dominion of the Crown where His Majesty has a lawfully established court of justice having authority to issue this writ and to ensure its due execution. The person to whom it is addressed must make a return to the writ stating why he holds the prisoner in custody; and must bring the prisoner into court. On the return of the writ the prisoner is either discharged, or, if the return is sufficient, i.e., shows sufficient cause for the detention in custody, is remanded to custody, or is admitted to bail.

Writ of *Habeas Corpus*, the remedy against illegal custody.

24. The writ will issue to any person who has a person in custody, whether civil or military, if the affidavits in support of the application show some probable ground for awarding it. The writ will not as a rule issue to question the mode in which military jurisdiction has been exercised (b); but, if a particular formality is by statute requisite to make valid an order (for instance) for imprisonment, and the formality is shown not to have been followed, then it may be granted (c).

When *habeas corpus* will issue.

25. It would seem, as a rule, to be a sufficient return to the writ that the person in custody is a person subject to military law, and that all the proceedings were according to military law (d).

What is a sufficient return to writ.

(a) "Times," 11th June, 1879. In the case of *Re Tuffnell*, L. R., 3 Ch. D., 164, a petition of right was presented by an army surgeon, who had been compulsorily retired on half pay, for the injury thereby sustained by him. A demurrer by the Attorney-General to the petition was allowed, the Vice-Chancellor stating the law clearly to be that "every officer in the Army is subject to the will of the Crown and can be removed and put on half pay, or dealt with as the Crown, with a view to the public convenience, thinks best." See also *R. v. Secretary of State*, L. R. [1891] 2 Q. B., pp. 330, 331.

(b) *Blake's case*, 2 M. and S., 428.

(c) *Allen's case*, 30 L. J. (N.S.), Q. B., 38; 7 Jur. (N.S.), 234, but see now Army Act, s. 172 (4), and below, para. 37.

(d) *R. v. Suddis*, 1 East, 306; and as to general law, *Brenan's case*, 10 Q. B., 492.

Ch. VIII. 26. Blake's case (*a*), in which the application for the writ was refused, is a strong instance of the disinclination of courts of law to interfere with matters of military discipline. The writ was moved for on behalf of Lieutenant Blake, of the 55th Regiment, to be addressed to the commanding officer of the infantry barracks at Windsor. The affidavit in support of the motion stated that Lieutenant Blake, being on leave and hearing that there were certain charges alleged against him, voluntarily surrendered himself to take his trial, that on the 21st September he was placed under arrest and in close confinement, and that until the latter end of October he was not permitted to quit his room, but afterwards, on a representation that his health suffered, was allowed to take exercise. On the 1st November, not having been furnished with any copy of the charges against him, he presented a memorial to the Commander-in-Chief, but did not receive any answer. On the 16th of November he was officially informed that a warrant had been signed for holding a court-martial, and was furnished with a copy of the charges, which consisted among others of certain offences stated to have been committed at Windsor towards an officer of the same regiment. On the 22nd, the 55th Regiment was ordered on foreign service, and shortly afterwards sailed for Holland. The affidavit then stated that all or many of the witnesses who might be called for the prosecution or defence had sailed with the regiment, that the laws of this realm would not permit him to be sent to a foreign country for trial, and therefore he could not be brought to trial before the return of the regiment. It further alleged that, as a matter of fact, a sufficient number of officers might at any time have been conveniently assembled for the purpose of constituting a court-martial; and therefore there had been ample opportunity for conveniently assembling one between the arrest and the signing of the warrant, and also between the signing of the warrant and the sailing of the regiment.

General disinclination of courts to interfere with matters of discipline.
Blake's case, 1814.

27. The Court inquired if there was any instance of a *habeas corpus* to take a military subject out of military arrest, and were referred to the case of Serjeant Wade (*b*) where a rule *nisi* (*i.e.*, a rule calling on the other side to argue the question and show why the writ should not issue) had been granted. Mr. Justice Dampier, however, said he hesitated about granting a rule *nisi*, because upon the question whether a court-martial could be conveniently assembled, if the return should be general that a court-martial could not be conveniently assembled, the court would be concluded, and he conceived the truth of such return could hardly be entered into upon an action for a false return, and Mr. Justice Le Blanc concurred. A rule *nisi* was, however, granted, and on its coming on to be argued, an affidavit from the Judge Advocate-General was produced, stating that proceedings were instituted for bringing Blake to trial as soon after his arrest as could conveniently be done; and that he believed Blake would have been tried before, had not the trial been postponed partly on account of the absence in the West Indies of persons alleged by Blake to be material for his defence, and partly on account of the embarkation of the 55th Regiment.

28. The Court refused the writ, Lord Ellenborough, C.J., observing, "Up to the 16th November the applicant seems to have thought it a fair time, and the delay since has been satisfactorily

Rule *nisi* granted.

(a) 2 M. and S., 428.

(b) Cited in the report of this case, 2 M. & S., 429. n.

explained; it is not a wanton or oppressive delay, but arising out of the circumstances of the country. We cannot lay down any general rule, but must in a very great degree give credence to people in high situations when they depose that all has been done which could conveniently and according to the course of office be done, and unless something be shown to the contrary" (a).

29. The leading authority as to the sufficiency of a return to the writ which states that the prisoner is in custody under the sentence of a court-martial competent to pass such sentence on him, is *Suddis' case*, decided in 1801 (b).

30. Suddis was a gunner of the Royal Artillery sentenced at Gibraltar by a general court-martial to fourteen years' transportation for having received articles stolen from a warehouse in Gibraltar. A writ of *habeas corpus* was directed to the Governor of Portsmouth to bring him up from custody. It was held a sufficient return to the writ that the defendant was in custody under the sentence of a court of competent jurisdiction to inquire into the offence and to pass such a sentence, without setting forth the particular circumstances to warrant the sentence. Lord Kenyon, C.J., said, "We are not now sitting as a Court of Error to review the regularity of these proceedings; nor are we to hunt after possible objections." And Mr. Justice Grose, "It is enough that we find such a sentence pronounced by a court of competent jurisdiction to inquire into the offence, and with power to inflict such a sentence; as to the rest we must presume *omnia rite acta*."

31. In the case of *Jones v. Danvers* (c) it was held that the court cannot grant a *habeas corpus* to bring up a defendant who is in military custody, for the purpose of charging him in execution for a civil debt. By the court: "We have only civil jurisdiction, and have no authority to change the custody in such a case as this."

32. In the two following cases the prisoner was discharged by means of a writ of *habeas corpus*; in the first case because the return did not sufficiently show the military character and obligations of the prisoner, in the second for want of jurisdiction in the officer who confirmed the sentence of the court-martial.

33. Captain Douglas, of the 49th Madras Native Infantry was committed by a magistrate to prison as a deserter, and afterwards by authority of the Secretary at War was given up to Lieut.-Colonel Hay, commanding the East India Company's troops at Chatham, and by him removed under military arrest to that place. A *habeas corpus* was thereupon obtained addressed to Colonel Hay and every officer or person having the custody of Captain Douglas, and he was brought into court in obedience to the writ. The return to the writ alleged that the prisoner was detained as a deserter under 5 & 6 Vict. c. 12, s. 22, but did not expressly show that he was a soldier and ought to be with his corps. Captain Douglas was in consequence discharged (d).

34. Porrett, a soldier of the Bombay Army, was sentenced by a general court-martial to seven years' transportation for

(a) In the case of Lieut. Hall (*R. v. Cuming, E. p. Hall*, L. R. 19 Q. B. D. 13), a writ of *habeas corpus* was applied for to discharge a lieutenant in the Navy who had been arrested by order of the Admiralty for alleged desertion, and was detained as a prisoner on board one of Her Majesty's ships under the command of Captain Cuming, with a view of being brought to trial before a court-martial. The court admitted Lieut. Hall to bail while the case was pending, but ultimately refused the writ.

(b) *R. v. Suddis*, 1 East, 306.

(c) 5 M. & W. 234.

(d) 3 Q. B. 825.

Ch. VIII. embezzlement. The sentence of the court-martial was confirmed by Sir C. Napier, the Governor of Sindh. A writ of *habeas corpus* was obtained and Porrett was discharged, as it was shown that Sir C. Napier had no power to confirm the sentence of the court (a). Had the question been one of military procedure instead of jurisdiction, the result would doubtless have been different.

Allen's case,
1860.

35. When a military prisoner is detained in a prison without any legal warrant or order for his custody in that prison, he can obtain his discharge by *habeas corpus*. In 1859 Lieutenant W. H. C. Allen was tried by a general court-martial at Shahjehanpore for the murder of his native servant, and, being found guilty of manslaughter, was sentenced to four years' imprisonment without hard labour. General Lord Clyde confirmed the sentence, and ordered him to be imprisoned in the Fort of Agra. On the 29th November, 1859, Lord Clyde gave a written order for his removal in military custody to England, there to undergo the remainder of his sentence. On arrival he was successively committed to Millbank, the military prison at Weedon, Newgate, and the Queen's Prison. After having been four months in the Queen's Prison he applied to the Court of Queen's Bench for a writ of *habeas corpus* on the ground that his detention was illegal, there being no such written order as required by the Mutiny Act to the keeper of the Queen's Prison to receive Lieutenant Allen into his custody. In the result the prisoner was discharged.

Observa-
tions of
Chief
Justice
Cockburn.

36. The Chief Justice Cockburn observed that it was enough to say that there was no order in writing under the provisions of the Mutiny Act by virtue of which the keeper of the Queen's Prison could detain Lieutenant Allen. All that appeared was that Lord Clyde, the commanding officer of the district, having first directed that Lieutenant Allen should be placed in Agra, afterwards made an order for his removal to this country to undergo the remainder of his sentence; but it did not appear that either the officer commanding the regiment, or Lord Clyde, had made any order on the keeper of the Queen's Prison to receive Lieutenant Allen. The deficiency was attempted to be made up by an order under the hand of the Adjutant-General representing the Commander-in-Chief, and stating that Lieutenant Allen had been convicted by a court-martial in India. That, however, was not a legal warrant, and under the circumstances the court was constrained, though unwillingly, to discharge the prisoner (b).

Military
custody not
now illegal
by reason
merely of
informality,
&c.

37. It is now provided by the Army Act (c) that, where a military prisoner is for the time being in any custody in which he *might* legally be kept, informality or error in the order or warrant, or the authority by or in pursuance whereof he is detained, shall not make the custody illegal; and any such order or warrant may be amended. A case such as that of Lieutenant Allen can, therefore, scarcely occur again.

Application
for attach-
ment
against
officer
failing to
make
return.

38. Where a writ of *habeas corpus* was issued to an officer to produce a recruit who was detained as a deserter, and the officer by direction of the Horse Guards discharged the prisoner, and made no return, the court were of opinion that he ought to have returned the fact of the discharge, but would not grant an attachment for contempt (d).

(a) Perry's Oriental cases, 414.

(b) 30 L. J. (N.S.), Q. B., 38; 7 Jurist (N.S.), 234.

(c) A.A. 172 (4), and 165.

(d) *Re Garin*, 15 Jurist, 329.

39. In *Simmons on Courts-martial* (a) a case is cited of a store-keeper who had been convicted by court-martial under the 17th Section of the Mutiny Act on a charge of embezzling or fraudulently misapplying, and imprisoned in a civil gaol, obtaining his release by *habeas corpus* from the Court of Queen's Bench at Montreal. The court adjudged the commitment to be void by reason of the form of charge and finding, and ordered the prisoner to be discharged, "because the charge and conviction were in the alternative . . . without any certainty as to any or either of the two charges in the disjunctive, and this is matter of substance."

Oh. VIII.

Canadian case cited in *Simmons on Courts-martial*.

(iv.) *Actions for Damages.*

40. It is a general rule of law that magistrates and others, who, acting without jurisdiction, or in excess of their jurisdiction, violate the personal rights of any person by causing his arrest, imprisonment, or otherwise, are liable to an action for damages (b). Accordingly, members of a court-martial who try a person not subject to military law, or for an act which is not an offence cognisable by them, or who pass a sentence which they have no power to pass, are all liable to an action at the suit of the person aggrieved; and the officer who confirmed the proceedings will also be liable (c). The same rule is applied to officers in the exercise of individual authority; so soon as they transgress the bounds of their lawful authority they expose themselves to an action, though they may have acted with entire *bonâ fides*.

Actions against members of courts-martial and individual officers.

41. The case of Lieutenant Frye (d), which occurred in 1743, and is especially remarkable from its sequel, is a leading authority respecting the liability of all who are parties to an illegal sentence passed by a court-martial. Lieutenant Frye, of the Marines, was brought to a court-martial at Port Royal, in Jamaica, by his captain, for disobedience in refusing to assist another lieutenant in carrying an officer prisoner on board ship without a written order from the captain. Part of the evidence produced against Lieutenant Frye at the court-martial consisted of depositions made by illiterate natives, whom he had never seen or heard of, and reduced into writing several days before he was brought to trial; and upon his objecting to the evidence he was brow-beaten and overruled. Lieutenant Frye was sentenced to 15 years' imprisonment, and rendered for ever incapable of serving His Majesty, though the Court had only power to award two years' imprisonment. On his arrival in England, his case was laid before the Privy Council and the punishment remitted by His Majesty.

Illegal sentence by court-martial. *Frye v. Ogle* 1743.

42. Some time afterwards he brought an action in the Court of Common Pleas against Sir Chaloner Ogle, the president of the court-martial, and obtained a verdict in his favour for 1,000*l.* damages. The Chief Justice Willes, moreover, informed him that he was at liberty to bring his action against any of the other members of the court-martial (e). Accordingly Lieutenant Frye

Damages recovered by Lieut. Frye.

(a) 7th edn., p. 165.

(b) *Crepps v. Durden*, 1 Smith Lead. Ca., 11th edn., 651.

(c) *Frye v. Ogle* McArthur on Courts-martial, 4th edn., i. p. 268; *Comyn v. Sabine*, cited in 1 Smith Lead. Ca., 11th edn., 600.

(d) McArthur on Courts-martial, 4th edn., i. p. 268, and App. XXIV.

(e) This dictum of the Chief Justice cannot be considered law. From *Brinsmead v. Harrison*, L. R. 7 C. P. 547, it seems to be conclusively settled that a judgment obtained in an action against one of two or more wrongdoers is a bar to an action against the others for the same cause, even though the judgment remains unsatisfied. The injured party can, however, sue all the wrongdoers together in the first instance; and if he only sues one, the court has power to make the others parties to the action.

Ch. VIII. obtained writs against Rear-Admiral Mayne and Captain Renton which were served on them at the breaking up of another court-martial held on Vice-Admiral Lestock at Deptford at which they were members.

Sequel of
this case.

43. The members of this court highly resented this proceeding, and drew up resolutions, in which they expressed themselves with some acrimony against the Chief Justice, and forwarded them to the Lords of the Admiralty. In these resolutions they demanded "satisfaction for the high insult on their president, from all persons how high soever in office, who have set on foot this arrest, or in any degree advised or promoted it." The Lords of the Admiralty laid the resolutions before His Majesty; and the Duke of Newcastle, by His Majesty's command, wrote to the Lords of the Admiralty, expressing "His Majesty's great displeasure at the insult offered to the court-martial, by which the military discipline of the navy is so much affected; and the King highly disapproves of the conduct of Lieutenant Frye on the occasion."

Vindication
by the Chief
Justice of
his authority.

44. The Chief Justice, as soon as he heard of the resolutions of the court-martial, caused each individual member to be taken into custody, and was proceeding further to assert and maintain the authority of his office, when the following submission (signed by the president and all the members of the court-martial on Vice-Admiral Lestock) was transmitted to him: "As nothing is more becoming a gentleman than to acknowledge himself to be in the wrong, so soon as he is sensible he is so, and to make satisfaction to any person he has injured: we therefore whose names are underwritten, being thoroughly convinced that we were entirely mistaken in the opinion we had conceived of Mr. Chief Justice Willes, think ourselves obliged in honour, as well as justice, to make him satisfaction as far as is in our power. And as the injury we did him was of a public nature, we do in this public manner, declare that we are now satisfied the reflections cast upon him in our resolutions of the 16th and 21st of May last were unjust, unwarrantable, and without any foundation whatsoever: and we do ask pardon of his Lordship and of the Court of Common Pleas, for the indignity offered both to him and the Court." This paper was dated the 10th November, 1746, and on its reception in the Court of Common Pleas was read aloud and ordered to be registered "as a memorial," said the Chief Justice, "to the present and future ages, that whosoever set themselves up in opposition to the law or think themselves above the law, will in the end find themselves mistaken."

Observations
of
Lawrence, J.

45. It was observed with respect to this case by Lawrence, J., in *Warden v. Bailey* (a), that Lieutenant Frye did not appear to have been legally imprisoned at first, because the matter charged against him did not amount to any offence.

Illegal imprisonment
by president
of court-martial.

46. In 1804, Colonel More brought an action against Colonel Bastard, the president of a court-martial, for having ordered his imprisonment on the charge of having suborned a witness before the court. Colonel More was also a witness. He obtained a verdict with 300*l.* damages, Lord Mansfield remarking that a court-martial has no power of imprisoning a witness except for impropriety of conduct (b).

(a) 4 Taunt., 78.

(b) *More v. Bastard*, cited in *Warden v. Bailey* 4 Taunt., 70. In an action brought at Calcutta in 1841, a reporter recovered nominal damages against the president of a court-martial for having ordered the forcible seizure of his notes, which he had persisted in taking after being ordered to desist. *Ricketts v. Walker*, Hough, Mil. Precedents, 718.

47. In the case of *Warden v. Bailey* (a) it was decided that an action lies for imprisoning a man for disobedience to an order given without jurisdiction by his military superior. Ch. VIII.

48. Warden was a permanent serjeant of the Bedford militia, and, in common with the other non-commissioned officers of the regiment, was ordered by the colonel to attend an evening school, and to pay 8d. a week towards the expenses of the school. Having neglected to obey this order, Warden was reprimanded for his conduct, and was afterwards, by direction of the adjutant, arrested and imprisoned in Bedford gaol, and subsequently tried by court-martial for mutinous words spoken on parade, and for thereby exciting others to disobedience, but was acquitted, and liberated in March, 1810. On this he brought his action against the adjutant, but was non-suited by Grose, J., on the ground that after the decision in *Sutton v. Johnstone* (b) he could not try the question of the propriety of the arrest. Illegal command by superior officer.
Warden v. Bailey, 1810.

49. This non-suit was set aside by the Court of Common Pleas, and a new trial granted, the court thinking that the order to attend school was most probably bad in law, and the order for payment of money certainly so. The case is most material as an instance of a court of law considering whether an order given by military authority is or is not within the scope of that authority; and as discountenancing the duty of absolute obedience in a soldier enunciated in *Sutton v. Johnstone* (c). Non-suit set aside, and new trial granted.

50. In the recent case, however, of *Dawkins v. Rokeby* (d), the unanimous opinion of ten judges, sitting in the Exchequer Chamber, is distinctly expressed, that cases involving questions of military discipline and military duty alone, are cognisable only by a military tribunal, and not by a court of law; and *Warden v. Bailey* is distinguished, on the ground that the act there complained of was a wrongful and illegal act, without any colour of law. The distinction cannot be considered quite satisfactory, as, in order to decide that the act was illegal, the court must have gone more or less into questions of military discipline and duty. Opinion of the Exchequer Chamber in *Dawkins v. Rokeby*.

51. Where the sentence was legal, but the prisoner has been imprisoned in a place to which he was not legally committed, the keeper of the prison and the person who issued the warrant will both be liable; and any officer commanding will also be liable in respect of the issue of the warrant by a subordinate officer for whom he is responsible (e); notwithstanding the ordinary rule, that where the superior did not appoint the subordinate officer, he is not responsible for the acts of that officer. Illegal execution of sentence.

(a) 4 Taunt., 87.

(b) See below, para. 87.

(c) See in particular the argument on the part of the defendant, which enunciated the doctrine of absolute obedience, and was virtually overruled by the court. The court, however, expressed a strong wish that the case should not be tried again, saying that "disputes respecting the extent of military discipline are greatly to be deprecated, especially in time of war; they are of the worst consequences, and such as no good subject will wish to see discussed in a civil action: they ought only to be the subject of arrangement between military men." The result of the new trial was that the plaintiff obtained a verdict, but this verdict was afterwards set aside by the Court of Error, and judgment entered for the defendant on the ground that Warden was in fact imprisoned for the use of mutinous language, and that there was probable cause for the imprisonment which justified the defendant.—*Bailey v. Warden*, 4 M. & S. 400. As to probable cause, see *Sutton v. Johnstone*, below, para. 87.

(d) L. R., 8 Q. B., 255; aff. L. R., 7 H. L., 744.

(e) See the case of Lieut. Allen above (para. 35), who subsequently recovered 50l. damages against the Governor of the military prison at Weedon. *Allen v. Boyle*, "Times," March 4, 1861; but as to the present law, see paragraph 37.

Ch. VIII.

Excessive
corporal
punish-
ment.

52. In several cases heavy damages have been recovered in respect of the unauthorized infliction of corporal punishment. Thus a seaman recovered damages in an action against Captain Tonym, R.N., for the infliction of several dozen lashes without a court-martial; the custom of the navy only permitting a commanding officer to inflict summarily one dozen lashes (a).

A similar action was brought against Colonel Bailey, of the Middlesex Militia, for improperly flogging a private, and 600*l.* damages were awarded. And in an action tried in 1793 at the Devon Assizes against the officers of the Devon Militia for inflicting 1,000 lashes on the plaintiff, who had been found guilty of a charge of mutiny, though the only act proved against him was that he had written to the colonel a letter telling him that the men were discontented, which was not communicated to anyone else, the plaintiff recovered 500*l.* or 600*l.* damages (b).

Trial by
court-
martial of
civilian.

53. Officers who are instrumental in dealing with a person not subject to military law as if he were so subject, clearly are liable to make reparation to the person aggrieved. This was illustrated as early as 1738 by the case of *Comyn v. Sabine* (c).

Comyn was a master carpenter of the office of ordnance at Gibraltar, and brought an action against the Governor-General Sabine for having confirmed the sentence of a court-martial which awarded him the punishment of 500 lashes. It was shown that the carpenters of the office of ordnance were not subject to military law, and the jury found the Governor to be liable, as having had a share in the sentence, and gave 500*l.* damages. Lord Mansfield, citing the case in *Mostyn v. Fabrigas* (d), said, "The Governor was very ably defended, but nobody thought the action would not lie."

Further
instances of
actions by
civilians.

54. The following cases are further instances of civilians recovering damages from officers in respect of a mistaken and unjustifiable exercise of their military authority.

In *Glynn v. Houston* (e) Mr. Glynn, a British merchant residing at Gibraltar, recovered 50*l.* damages from General Sir William Houston, the acting Governor, for having caused Mr. Glynn's premises to be surrounded with a detachment of troops, while a house immediately adjoining was searched for the person of Torrijos, a Spanish general; and for having during the search (which was unsuccessful) prevented Mr. Glynn from leaving his house by placing a sentinel with fixed bayonet at the door.

In *Goodes v. Lieutenant-Colonel Wheatly* (f), the plaintiff was doing duty as constable at St. James's Palace, and had occasion to desire Lieutenant-Colonel Wheatly, of the Guards, who was not in uniform, to walk on, whereupon Colonel Wheatly marched Goodes off to the guard-room by a file of grenadiers, and confined him there several hours. The plaintiff was non-suited, but, it would appear, solely in consequence of a failure in the proof of his appointment as a constable for St. James's parish.

In the case where the captain of an East Indianman, on two strange sails (supposed to be enemies) being descried, mustered all hands and passengers, and assigned them stations for the defence

(a) Prendergast, *Law relating to Officers of the Navy*, 2nd edn., p. 185. Cited in *Warden v. Bailey*, 4 Taunt., 71.

(b) Cited in *Warden v. Bailey*, 4 Taunt., 70.

(c) Cited in *Mostyn v. Fabrigas*, 1 Smith Lead Ca., 11th edn., 600.

(d) 1 Smith Lead Ca., 11th edn., 608.

(e) 2 Man & Gr., 337.

(f) 1 Campbell, 231.

of the ship, and the plaintiff, one of the passengers, refused to go to his station, and was thereupon, by order of the captain, carried there and kept in irons all night, it was held by Lord Ellenborough that though the captain might have been justified in confining the plaintiff for his refusal to obey orders, yet he had exceeded his authority in keeping the plaintiff in irons all night, and the jury gave 80*l.* damages (a). Oh. VIII.

55. Where an act complained of is itself unlawful, *bona fides* or honesty of purpose is no excuse, as appears from two cases cited by Lord Mansfield in *Mostyn v. Fabrigas* (b). Captain Gambier, by order of Admiral Boscawen, pulled down the houses of some sutlers on the coast of Nova Scotia, who supplied the sailors frequenting them with spirituous liquors, whereby their health was injured. One of the sutlers came over to England, and brought an action against Captain Gambier, in which he recovered 1,000*l.* damages. The second case cited by Lord Mansfield, in which Admiral Palliser was sued for destroying some fishing huts erected by Canadians on the Labrador coast, went off upon a reference; but it does not seem to have been questioned that the action lay. *Bona fides* does not excuse an illegal act.

56. The right to bring an action in the courts of this country in a case where the cause of action arose abroad does not seem to have been conclusively established till the decision in 1774 of *Mostyn v. Fabrigas* (c). Immaterial that cause of action arose abroad.

57. Fabrigas, a native of Minorca, brought an action against General Mostyn, Governor of that island, for having, without trial, imprisoned and banished him from the island, and recovered 3,000*l.* damages. On a bill of exceptions, the point that, where the cause of action arises abroad, the courts of this country have no jurisdiction, was elaborately argued; but Lord Mansfield, delivering the judgment of the court, emphatically laid down that actions of this description may be brought in England, though the matter arises in foreign parts. He also, with no less emphasis, repudiated the argument addressed to him, that the defendant was entitled to protection from an action by reason of his character as Governor. *Mostyn v. Fabrigas*, 1774.

58. For mere errors of judgment, members of a court-martial cannot be made responsible any more than civil judges and magistrates. "Even inferior justices and those not of record," says Lord Tenterden, in *Garnett v. Ferrand* (d) "cannot be called in question for an error of judgment so long as they act within the bounds of their jurisdiction. In the imperfection of human nature it is better even that an individual should occasionally suffer a wrong than that the general course of justice should be impeded and fettered by constant and perpetual restraints and apprehensions on the part of those who are to administer it. Corruption is quite another matter, so also are neglect of duty and misconduct in it. For these, I trust, there is, and always will be, some due course of punishment by public prosecution." Members of court-martial not liable for mere errors of judgment.

59. Notwithstanding the reluctance of the courts of law to interfere with the exercise of military authority over those Abuse of military authority.

(a) *Boyce v. Bayliffe*, 1 Campbell, 58.

(b) 1 Smith Lead. Ca., 11th edn., pp. 613, 614.

(c) 1 Smith Lead. Ca., 11th edn., p. 591. For historical sketch of the law relating to venue, formerly of much greater importance than at present, see *id.* p. 615, and *seq.* See also *British South Africa Company v. Companhia de Moçambique*, L. R. (1893), A. C. 602.

(d) 6 Barn. and C. 9 Dowl. and R. 657. See also *Scott v. Stansfield*, L. R., 3 Ex. 220, where the law is laid down in similar terms.

Ch. VIII. subjected to military law, and though (speaking generally) all acts done in the course of military duty are justified—yet if military authority is exercised with excessive severity, oppression, or cruelty, so that the exercise, in fact, amounts to an abuse of jurisdiction, then the justification is destroyed, and the person injured may recover damages (a).

Wall v. Macnamara. 60. Thus, in *Wall v. Macnamara* (b), the plaintiff, a captain in the African Corps, brought an action against the Lieutenant-Governor of Senegambia for imprisoning him for nine months at Gambia, in Africa. The defence was a justification of the imprisonment under the Mutiny Act, for disobedience of orders. At the trial it appeared that the imprisonment of Captain Wall, which was at first legal—namely, for leaving his post without leave from his commanding officer, though in a bad state of health—had been aggravated with many circumstances of cruelty. Lord Mansfield, in summing up, said, “In trying the legality of acts done by military officers in the execution of their duty, particularly beyond the seas, where cases may occur without the possibility of application for proper advice, great latitude ought to be allowed, and they ought not to suffer for a slip of form, if their intention appears by the evidence to have been upright. . . . Thus the principal inquiry to be made by a court of justice is, *how the heart stood?* and if there appears to be nothing wrong there great latitude will be allowed for misapprehension or mistake. But, on the other hand, if the heart is wrong, if cruelty, malice, and oppression appear to have occasioned or aggravated the imprisonment or other injury complained of, they shall not cover themselves with the thin veil of legal forms, nor escape under cover of a justification, the most technically regular, from that punishment which it is your province and your duty to inflict on so scandalous an abuse of public trust. It is admitted that the plaintiff was to blame in leaving his post, but there was no enemy, no mutiny, no danger, his health was declining, and he trusted to the benevolence of the defendant to consider the circumstances under which he acted. But supposing it to have been the defendant’s duty to call him to a military account for his misconduct, what apology is there for denying him the use of the common air, in a sultry climate, and shutting him up in a gloomy prison, where there was no possibility of bringing him to trial for several months, there not being a sufficient number of officers to form a court-martial? These circumstances, independent of the direct evidence of malice, as sworn to by one of the witnesses, are sufficient for you to presume a bad, malignant motive in the defendant, which would destroy his justification, had it even been within the powers delegated to the defendant by the commission.” The jury found a verdict for Captain Wall, with 1,000*l.* damages (c).

Where jurisdiction exists, action only lies if malice can be inferred.

61. If an officer is exercising a legal jurisdiction possessed by him, he can, as a rule, only render himself liable to an action by exercising it with such circumstances of undue severity and

(a) See the judgment of the Court of Exchequer delivered by Baron Eyre in *Sutton v. Johnstone*, 1 T. R. at p. 504: “And one may observe in general in respect of what is done under powers incident to situations, that there is a wide difference between indulging to situation a latitude touching the *extent* of power, and touching the *abuse* of it. Cases may be put of situations so critical that the power ought to be unbounded; but it is impossible to state a case where it is necessary that it should be abused, and it is the felicity of those who live under a free constitution of government that it is equally impossible to state a case where it can be abused with impunity.”

(b) Cited in *Sutton v. Johnstone*, 1 T. R. 536.

(c) As to criminal liability for abuse of authority, see below, para. 88, *et seq.*

oppression as to justify a jury in inferring malice. There are, however, one or two cases from which it would appear that even where injustice or oppression is the result of mere carelessness, and not of any bad intention, the officer guilty of such conduct may be held liable. Oh. VIII.

62. Captain Molloy, of Her Majesty's ship Trident, kept the purser Swinton in confinement for three days without inquiring into the case, and then, on hearing his defence, released him. The purser brought an action against Captain Molloy, and on the evidence Lord Mansfield said that such conduct on the part of the captain did not appear to have been a proper discharge of his duty, and, therefore, that his justification under the discipline of the Navy had failed him. It does not appear from the citation of this case in the Term Reports what the verdict in this case was (a). Swinton v. Molloy.

63. On the other hand, the custom of the service, if not inconsistent with the law of the land, may be a justification of an act done in pursuance of such custom. For example, in an action by a midshipman against his first lieutenant for having caused him, on his refusal to go to the masthead, to be hoisted thither by a party of seamen, mast heading was proved to be a customary punishment of the service, and the Chief Justice ruled that it was a justification (b). Custom of the service may be a justification.

64. In *Grant v. Shard* (c) violent language and striking a subordinate officer on duty were held actionable. Grant was directed to give a military order, and it appeared that he sent two persons who failed. Shard thereupon said to Grant, "What a stupid person you are," and twice struck him. Although the circumstances occurred in the actual execution of military service, it was held that the action was maintainable, and a verdict was found for the plaintiff, with 20*l.* damages. An application was afterwards made to the Court of King's Bench to set aside the verdict, but the court, after argument, refused to disturb it, though Lord Mansfield was desirous to grant a new trial. The above cases of *Swinton v. Molloy* and *Grant v. Shard* are no doubt strong ones, and it would probably be now held in similar circumstances that the aggrieved person could only seek redress at the hands of the military authorities. Grant v. Shard.

65. Civilians will always be protected by courts of law against the arbitrary and oppressive exercise of military jurisdiction (d). Thus, *Sutherland v. Murray* (e) was an action brought in 1783 by Mr. Sutherland, a judge in Minorca, against General Murray for improperly suspending him from his office. The General had professed himself ready to restore the judge on his making a particular apology; and on reference to the home authorities the King approved of the suspension unless the Governor's terms were complied with. It was admitted that General Murray had power to suspend the judge for proper cause; yet on the proof of his having unreasonably and improperly exercised that authority, and notwithstanding the King's approbation of his proceedings, damages to the amount of 5,000*l.* were awarded against him by the jury. Civilians protected against abuse of military authority.

(a) *Swinton v. Molloy*, cited in *Sutton v. Johnstone*, 1 T.R. 537. Prendergast, *Law Relating to Officers of the Navy*, Part II, 374, cites another very similar case which occurred in 1823.

(b) Prendergast, Part II, 377.

(c) Cited in *Warden v. Bailey*, 4 Taunt., at p. 85.

(d) See paras. 53-55 above.

(e) Cited in *Sutton v. Johnstone*, 1 T.R., 538. The facts of his case are not very fully or clearly given in 1 T.R.; and it may be questioned whether it does not more properly belong to the class of cases next referred to.

Ch. VIII.

Acts complained of as done maliciously and without probable cause.

Sutton v. Johnstone, 1786.

66. The class of cases last referred to occupy a sort of intermediate position between cases where the act complained of is done without jurisdiction, and the cases where an act, in itself a legal exercise of military authority towards a person subject to military law, is charged as done maliciously and without probable cause.

67. In this latter class of cases no action can be maintained, unless the plaintiff avers and proves that the act complained of was done without probable cause (a). This proposition was laid down by Lords Mansfield and Loughborough in 1786 in the great case of *Sutton v. Johnstone* (*Johnstone v. Sutton*, in error) (b), and has never since been disputed.

The circumstances of *Sutton v. Johnstone* were as follows:—The plaintiff Sutton was captain of His Majesty's ship *Isis*, which formed part of a squadron under the command of the defendant Johnstone. On the 16th April, 1781, there being war between the United States and the French on the one hand, and the English on the other, the defendant Johnstone ordered the ships under his command to pursue the French fleet, and signalled to Sutton to slip his cable in order to engage the enemy. Sutton having failed to slip his cable, the defendant Johnstone caused him to be brought to a court-martial on the ground of his having "delayed and discouraged the public service on which he was ordered," and for disobedience of orders in not slipping his cable and putting to sea. Sutton admitted on the trial by court-martial that he had disobeyed the orders, but averred that he did not wilfully and willingly disobey them by reason that he was physically incapable of obeying them. The court-martial found that Sutton was justified in not immediately slipping his cable owing to the state in which his ship was, and that he did not delay the public service, and adjudged him to be honourably acquitted. Upon this, Sutton brought an action against Johnstone for having maliciously and without probable cause charged him with the crime of disobedience of orders and the delay of the public service.

Questions raised in this case.

68. Practically, two important questions were raised in the case. First, whether an action for malicious prosecution would lie by a subordinate officer against his superior officer for an act done in the course of discipline and under powers incident to his situation; secondly, whether, supposing such an action would lie, Johnstone had or had not probable cause for charging the plaintiff with disobedience to his orders, and delaying the public service, and, therefore for bringing him to a court-martial.

Result of trials, and decision of Court of Exchequer.

69. The case was twice tried before the Chief Baron at Guildhall, and the plaintiff Sutton recovered 5,000*l.* damages on the first trial and 6,000*l.* on the second. A motion was then made in the Court of Exchequer in arrest of judgment, and upon this two points were raised: first, whether the action would lie; secondly, whether if it did lie, the plaintiff was entitled in law to keep the verdict. The Court of Exchequer decided that the action would lie, on the ground apparently (p. 504) that "all men hold their situations in this country upon the terms of submitting to have their conduct examined and measured by that standard which the law has established."

The court further decided that the plaintiff was entitled in law to hold his verdict on the grounds (p. 507), that, admitting for the sake of argument, that probable cause appeared for the charge of

(a) This expression is used in the judgments in *Sutton v. Johnstone*, and throughout this chapter, as equivalent to "reasonable and probable cause."

(b) 1 T. R. 493, 784; 1 Bro. P. C. 78.

disobedience, yet no probable cause appeared for the charge of *delaying the public service*, of which the plaintiff had been acquitted by the court-martial, and that this was enough to support the verdict. The court observed:—

"The plaintiff charges the defendant with having maliciously and without probable cause brought the plaintiff to a court-martial upon one charge" (that of delaying the public service), "for which there was not a probable cause, and upon another charge" (that of disobedience of orders), "for which there was probable cause. The declaration is therefore *felo de se* with respect to the latter, but good as to the former. In that case, after a verdict, the jury must be taken to have given damages for that part of the case only which is actionable." The rule therefore for arresting the judgment was discharged.

70. Shortly afterwards Johnstone brought a writ of error in the Exchequer Chamber, and the judgment of the Court below was reversed. Taking the second point first, whether there was or was not probable cause for bringing Sutton to a court-martial, the court, Lords Mansfield and Loughborough, stated (p. 547):—

Reversal of decision of Court of Exchequer by Exchequer Chamber.

"Under all these circumstances,—it being clear that the orders were given, heard, and understood, that in fact they were not obeyed, that by not being obeyed the enemy were enabled the better to sail off, that the defence was an impossibility to obey (a most complicated point)—under all these circumstances we have no difficulty to give our opinion that in law the commodore (Johnstone) had a probable cause to bring the plaintiff (Sutton) to a fair and impartial trial" (a). The court further declared that "nothing less than a physical impossibility to obey could be a justification. A subordinate officer must not judge of the danger, propriety, expediency, or consequence, of the order he receives; he must obey. Nothing can excuse him but a physical impossibility. A forlorn hope is devoted, many gallant officers have been devoted, fleets have been saved and victories obtained, by ordering particular ships upon desperate services, with almost a certainty of death or capture" (p. 546).

On the first point whether the action would lie, the court observed (p. 550) that it was not necessary to give judgment, because, supposing the action did lie, the court thought judgment ought to be given for the defendant. The court, however, was inclined to lean against the action lying, on the ground that a Commander-in-Chief has a discretionary power by the sea military code to put any man in the fleet upon his trial, that a court-martial alone can judge of the charge, that if the power of the Commander-in-Chief was abused, such an abuse was provided against by the 33rd Article of War, and that a commander who arrested, suspended, or put a man on his trial without probable cause might be tried by court-martial and punished accordingly.

The court said (p. 549):—"Commanders in a day of battle must act upon delicate suspicions, upon the evidence of their own eye; they must give desperate commands; they must require instantaneous obedience. In case of a general misbehaviour they may be forced to suspend several officers and put others in their places. A military tribunal is capable of feeling all these circumstances, and understanding that the first, second, and third part of a

(a) It is settled that what constitutes probable cause is a question to be determined by the judge on the facts found by the jury. *Lister v. Perryman*, L.R. 4 H.L. 521.

Ch. VIII. soldier is obedience. But what condition will a commander be in if upon the exercising of his authority he is liable to be tried by a common law judicature? If this action is admitted, every acquittal before a court-martial will produce one. Not knowing the law, or the rules of evidence, no commander or superior officer will dare to act; their inferiors will insult and threaten them. The relaxation and decay of discipline in the fleet has been severely felt. Upon an unsuccessful battle there are mutual recriminations, mutual charges, and mutual trials; the whole fleet take sides with great animosity, party prejudices mix. If every trial is to be followed by an action, it is easy to see how endless the confusion, how infinite the mischief will be. The person unjustly accused is not without his remedy: he has the properest amongst military men; reparation is done to him by an acquittal, and he who accused him unjustly is blasted for ever and dismissed the service."

The judgment of the Court of Exchequer Chamber was confirmed by the House of Lords (a).

Probably no action lies for an act within limits of military authority even where done maliciously and without probable cause.

71. The decision in *Sutton v. Johnstone* (b), proceeded solely on the ground that in that particular case there was probable cause for bringing Sutton to a court-martial, and the question raised, but not decided in that case, viz., whether an action by a person subject to military law would lie against an officer for an act within the limits of his authority, but done maliciously and without probable cause, long remained one on which judicial opinion was divided. Lords Loughborough and Mansfield, in *Sutton v. Johnstone*, plainly inclined to the view that such an action would not lie (c), and this view was explicitly affirmed by Mellor, Lush, and Hayes, J.J. in *Dawkins v. Paulet* (d); while Cockburn, C.J., as explicitly rejected it. Having regard, however, to the recent case of *Marks v. Frogley* (e), the correct view seems to be (though the point would still be open to argument in the House of Lords) that such an action would not lie, and that as between persons both subject to military law the mode of redress given by the Army Act is the only mode of redress, and that the Civil Courts cannot be invoked for the purpose.

The mode of redress in these cases is that prescribed by ss. 42 and 43 of the Army Act, which extend the provisions of the former Articles of War, 12 and 13, in favour of the soldier.

Actions for libel.

72. For statements made by an officer in the discharge of his military duty, even though the statements are made maliciously and

(a) 1 Bro. Parl. Ca., 76. *Barwis v. Keppel*, 2 Wils., 314, decided in 1766, as far as it goes supports the decision. Barwis, a discharged sergeant of the Guards, obtained a verdict with 70*l.* damages against Major Keppel, as acting commander of the regiment, for maliciously and without any reasonable (probable) cause reducing the plaintiff to the rank of a private for neglect of duty during the campaign of the King's forces in Germany under Prince Ferdinand in 1761. But on a case reserved for their opinion, the court said: "By the Act of Parliament to punish mutiny and desertion the King's power to make Articles of War is confined to his own dominions; when his army is out of his dominions, he acts by virtue of his prerogative and without the statute or Articles of War; and therefore you cannot argue upon either of them, for they are both to be laid out of this case, and *flagrante bello*, the common law has never interfered with the army; *inter arma silent leges*. We think (as at present advised) we have no jurisdiction at all in this case; but if the plaintiff's counsel think proper to speak more fully in this matter, we are willing to hear him."

"But," the reporter adds, "plaintiff, seeing the opinion of the court against him, acquiesced, and the judgment was for the defendant, *ut audiui*."

(b) 1 T. R. 493, 784.

(c) But see *Warden v. Bailey*, 4 Taunt., at p. 89.

(d) L. R. 5 Q. B. 94; and see also *Keighley v. Bell*, 4 F. & F. 763, and *Dawkins v. Lord Rokeby*, L. R. 8 Q. B. at p. 271.

(e) [1898] 1 Q. B. 888, at pp. 898, 900.

with the knowledge that they are false, it has in one case been held that an action for libel will not lie (a). Oh. VIII.

The above-mentioned case of *Dawkins v. Paulet* was an action of this description brought by Lieutenant-Colonel Dawkins against Major-General Lord F. Paulet in respect of certain statements and reports regarding the military conduct and qualifications of the plaintiff, forwarded by the defendant, in the ordinary course of military duty, to the Adjutant-General for the information of the Commander-in-Chief; and it was decided that, even assuming the truth of the allegations of the plaintiff, viz., that the statements (admittedly made in the course of military duty) were made maliciously and with the knowledge that they were false, the action would not lie. *Dawkins v. Paulet.*

73. In *Jekyll v. Moore* (b) the plaintiff brought an action for libel against Sir John Moore, who had been the president of a court-martial held for the trial of Colonel Stewart of the 43rd Regiment. The court "most fully and honourably" acquitted Colonel Stewart, and appended to this finding the following remarks:—"The court cannot pass without observation the malicious and groundless accusations that have been produced by Captain Jekyll against an officer whose character has, during a long period of service, been so irreproachable as Colonel Stewart's, and the court do unanimously declare that the conduct of Captain Jekyll in endeavouring falsely to calumniate the character of his commanding officer is most highly injurious to the good of the service." The Court of Common Pleas decided that no such action could be maintained, the Chief Justice, Sir James Mansfield, observing, "If it appear that the charges are absolutely without foundation, is the president of the court-martial to remain perfectly silent on the conduct of the prosecutor, or can it be any offence for him to state that the charge is groundless and malicious? It seems to me the words complained of in the case form part of the judgment of acquittal, and consequently no action can be maintained upon it." *Jekyll v. Moore.*

From this decision it would appear that comments by a court-martial censuring the conduct of a person in respect of a matter not before them would not be held privileged so as to exempt the members from an action (c).

74. The report made by a court of inquiry is absolutely privileged. In *Home v. Bentinck*, the plaintiff brought an action against the president of a court of inquiry for libel in publishing the contents of the report of the court, by communicating it to the Commander-in-Chief. The report contained these words: "The conduct of Lieutenant-Colonel Home does not appear to have been actuated by those high and delicate feelings of honour which in all transactions of life ought to influence an officer of high rank and reputation." The Court of Common Pleas were unanimously of opinion that the report was a privileged communication for which the officer making it could not be rendered responsible in a court of law; and that the officer who had been summoned to produce at the trial of the action the report in question and the Report of court of inquiry privileged.

(a) *Dawkins v. Paulet*, L.R. 5 Q. B. 94; and see the other cases cited below. In *Mitchell v. Kerr*, Rowe's Rep. 537, decided by the Court of King's Bench in Ireland in 1801, the defendant had written two libellous letters to the commanding officer of a regiment which the plaintiff was about to enter. At the trial the jury were directed that, if they thought the letters were written merely for the purpose of bringing the plaintiff to a court-martial, the action would not lie, and they found a verdict for the defendant, which the Court of King's Bench refused to disturb.

(b) 2 New Reports, 341.

(c) See *Prondergast*, Law Relating to Officers of the Navy, Part II, 405.

Ch. VIII. — proceedings of the court of inquiry was not bound nor even at liberty to disclose the documents in question, they being State documents and protected as such from exposure in courts of justice. This decision was confirmed on appeal to the Exchequer Chamber (a).

Question to be determined in these cases that of privilege.

75. In this class of cases the question always is whether the libel, if it be a libel, is, to use the technical term, privileged. This question is very similar to that discussed above as regards want of jurisdiction. If the communication charged as libel was made by a court in the exercise of its jurisdiction, or by an advocate or witness before such a court, it is considered absolutely privileged, and no one is liable in respect of it. If it is made otherwise than in the exercise of the proper jurisdiction, it has been held not to be so privileged, but this can scarcely be considered as settled. If it is made by a person not as a judge or witness but in the discharge of his military duty, it is according to the case of *Dawkins v. Paulet* (b), absolutely privileged. In any other case, if the statement is made in furtherance or under colour of any interest or duty, it is only *prima facie* privileged, and the privilege will be lost if actual malice or great excess is shown.

Malice held to take away privilege. *Dickson v. Wilton*, see *quære*.

76. In *Dickson v. Wilton* (c) Lord Campbell directed the jury that letters from the commanding officer of a regiment to his immediate superior containing charges against the Colonel, and a conversation with a member of Parliament as to a question to be put in the House of Commons relative to the dismissal of the Colonel on these charges, are *prima facie* privileged communications; but that if made from other motives than a sense of duty, which was a question for them to decide, the privilege would be gone. The jury found for the plaintiff with 20*5*l. damages. This case, however, was never discussed on a motion for a new trial, and the Court of Exchequer Chamber observed, in *Dawkins v. Lord Rokeby* (d), that the judge who tried it was wrong in compelling the production of the documents by the Secretary for War, and in ruling that malice might be inferred by the jury from the documents themselves without other evidence.

Dickson v. Combermere.

77. Again in *Dickson v. Combermere* (e), an action brought by the same plaintiff as in *Dickson v. Wilton*, not for libel, but for conspiring to obtain the removal of the plaintiff from his command by false charges, Chief Justice Cockburn told the jury that if the charges were in their opinion made without probable cause and maliciously, *i.e.*, apparently not in the course of military duty, they must find for the plaintiff; but in this case the verdict was for the defendant.

Publication of sentence of court-martial not a libel.

78. Publishing the sentence of a court-martial to the effect that Colonel — is dismissed from the service for gross violation of the trust reposed in him as commanding officer of the Molucca Islands is not libellous (f).

Complaint to proper authorities not a libel.

79. Nor again is a proper complaint to a superior officer or to the Secretary of State, or other authority having power to redress the matter complained of, a libel. This was decided by the Court of King's Bench in *Rex v. Baillie* (g), where the defendant, a Captain in the navy and Deputy Governor of Greenwich Hospital,

(a) 2 Broderip and Bingham, 130; 4 Moore, 563. See R.P. 124 (L.).

(b) L. R., 5 Q. B. 94.

(c) 1 F. and F. 419.

(d) L. R. 8 Q. B. 255; L. R. 7 H. L. 744.

(e) 3 F. and F. 527.

(f) *Oliver v. Lord W. Bentinck*, 3 Taunt. 456.

(g) *Holt on Libel*, 172; 21 *Howell's State Trials*, at pp. 69, 70.

had written, and distributed among the Governors of the hospital, a large volume containing an account of the abuses of the institution, and severely animadverting on the characters of some of its officers, especially Lord Sandwich, First Lord of the Admiralty. A conditional order obtained by Lord Sandwich for a criminal information against Captain Baillie for libel was discharged by the court; and Lord Mansfield said that this distribution of the work to the persons only who were from their situations bound and competent to redress the grievances in question, was not a publication sufficient to make it a libel.

80. In *R. v. Bayley* (a) and in *Fairman v. Ives* (b) letters had been written by the defendants to superior military authorities with the view of obtaining payment of debts due to them from the plaintiffs. In each case the circumstances of the alleged debt were stated, and fraud or concealment on the part of the plaintiff was alleged or suggested. It was held that the letters were not libels, being communications to the proper authorities having power to give redress of the alleged grievance.

81. On the other hand where a naval officer acting as government agent on board a transport wrote to Lloyd's imputing incapacity to the captain of the transport, it was held that the communication was not privileged, and the plaintiff recovered 50*l.* damages (c). The officer ought to have addressed his complaint to the Admiralty authorities.

82. With regard to the privilege of witnesses, the decision of the Court of Exchequer Chamber in *Dawkins v. Lord Rokeby* (d) having been affirmed by the House of Lords is a conclusive authority that a court of inquiry held under the Army Act is to this extent a court, that the statements made, whether orally or in writing by witnesses summoned to give evidence, are absolutely privileged, even though made with actual malice and without probable cause. It need scarcely be observed that evidence given before a court-martial is similarly privileged.

83. Negligence or unskillfulness in the discharge of professional duty may be actionable at the suit of a person injured by such negligence or unskillfulness. And any one committing a wrongful act or an act that cannot be justified, cannot escape liability for the offence merely because he acted in obedience to the order of the executive Government or of any officer of state (e).

84. Thus in the case of *Weaver v. Ward* (f), decided in 1616, the plaintiff and defendant were both soldiers of the London trained bands, and while engaged in skirmishing by way of military exercise, Ward's musket was discharged in such a way as to wound Weaver, who thereupon brought an action of trespass against Ward. Ward's defence was that he was in training by order of the Lords of the Council, and skirmishing in obedience to military command, and that the injury happened casually, by misfortune and against his will. But this was decided not to be enough. The court said, "No man shall be excused a trespass except it may be judged utterly without his fault."

(a) *Bac. Abr.* "Libel," A. 2.

(b) 5 *Barn. and Ald.* 642.

(c) *Harwood v. Green*, 3 *Car. and P.* 141.

(d) *L. R.* 8 Q. B. 255; 7 *H. L.* 744. It may be added that actions subsequently brought by Colonel Dawkins against certain members of the court of inquiry were stayed on the ground that they would not lie. *Dawkins v. Prince Edward of Saxe-Weimar*, *L. R.* 1 Q. B. D. 499.

(e) *Raleigh v. Goschen*, *L. R.* [1898] 1 *Ch.* 77.

(f) *Hobart's Reports*, 134.

Ch. VIII. 85. In 1844 the commander of Her Majesty's ship *Volcano* was held liable in an action brought in the Court of Admiralty for damage occasioned by a collision between the *Volcano* and the brig *Helen*. Both vessels had sought shelter in the same bay off the coast of Spain, the *Volcano* taking up a berth near the *Helen*. During a storm at night the *Volcano* broke her anchor, came into collision with the *Helen*, and so damaged her that she sank. The court was of opinion that the *Volcano* was to blame, both in taking up her original berth and also in not letting out more cable and in not dropping a second anchor; and damages were accordingly recovered from the commander (a).

Case of
H.M.S.
Volcano.

Action by
foreigner.

86. British Courts of Justice are open to subjects of friendly nations, and it has been held that a Spaniard could recover damages for seizure and detention of a cargo of slaves by a captain in the navy (b).

Non-
liability for
hostile acts
done by
authority of
Govern-
ment.

87. A British subject is not liable to actions by foreigners in respect of hostile acts done by him in the name of the Government which he serves, provided those acts are either authorised by an actual command or ratified by a subsequent approval of the Government. To such acts the maxim *respondereat superior* appears to apply; and, if the Government refuses redress, there is no remedy but an appeal to arms (c).

(v.) *Liability to Criminal Proceedings.*

Liability to
criminal
proceed-
ings.

88. There are several authorities which show that where the death of a person is caused by some act of a military officer done without jurisdiction, the officer is criminally responsible. Thus on the case of the action against the officers of the Devon Militia above mentioned being cited in *Warden v. Bailey*, Mr. Justice Heath expressed his opinion that, if the plaintiff in that action had died under the punishment inflicted by order of the court-martial, all the members of the court would have been liable to be hanged for murder (d).

Case of
Governor
Wall, 1802.

89. In the well-known case of Governor Wall (plaintiff in the action already noticed of *Wall v. Macnamara*), the penalty of death was actually inflicted on Governor Wall for a crime resembling in its nature and circumstances the conduct towards himself in respect of which he recovered damages. This crime was the murder of Serjeant Benjamin Armstrong, of the African Corps, in 1782, by inflicting on him 800 lashes with such cruelty as to cause his death.

Circum-
stances of
this case.

90. Governor Wall appears to have been arrested on the charge shortly after his return to England, but to have absconded and kept out of the way for nearly twenty years, as he was not tried till 1802. The circumstances out of which the charge arose were as follows:—In July, 1782, Mr. Wall was in command of the garrison at Goree, an island on the coast of Africa, and about to leave for home. The men of the garrison had some pecuniary compensation then due to them in respect of their having been put on a reduced allowance of provisions, and the paymaster responsible for meeting their demands was to leave together with Governor Wall. On the day before that fixed for their departure, a number of men, headed by Armstrong, twice proceeded to the house of the paymaster to

(a) "*Volcano*," 2 W. Robinson's Admiralty Rep. 337.

(b) *Madrazo v. Willes*, 3 Barn. and Ald. 353. Compare *Forbes v. Cochrane*, 2 Barn. and Cr. 448, in which case the plaintiff was a British subject.

(c) 1 Smith's Lead. Ca. 11th edn., 645, 649, and authorities there cited. *Buron v. Denman*, 2 Ex. 167; *Feather v. Key*, 35 L. J. (N. S.), Q. B. 200, 4 B. and S. 257.

(d) 4 Taunt., at p. 77.

obtain a settlement of their accounts. According to the evidence **Ch. VIII.** for the prosecution, there was no appearance of any mutiny, and no disrespectful or disorderly conduct on the part of the men, who returned to barracks when ordered to do so by Governor Wall. In the afternoon Governor Wall ordered a parade, and by his order 800 lashes were inflicted on Armstrong by black men, not with the ordinary cat, but with a description of rope. It was stated that Governor Wall stood by urging the black men to increased severity with coarse expressions, such as "Lay on, you black —, or I'll lay on you ; cut him to the heart." Armstrong died shortly afterwards in hospital. For the defence some evidence was given that the behaviour of the men, and in particular of Armstrong, had been mutinous, and that a sort of drum-head court-martial had been held which ordered the punishment ; and that the death of Armstrong was accelerated by drinking spirits in hospital.

91. Chief Baron Macdonald directed the jury that if there was no mutiny and no court-martial, and the punishment of 800 lashes with such an unusual instrument was ordered by the prisoner, there was certainly ground to infer malice ; and pointed out that Governor Wall in his report of the state of the settlement on his return made no mention of the existence of any mutinous spirit in the garrison. The jury found the prisoner guilty, after deliberating for half an hour, and he was hanged at Tyburn (a).

Direction of the Chief Baron to the jury.

92. A mistaken impression of duty will not excuse an officer, if he, without being justified by other circumstances, orders his men to fire, and some one is thereby killed, as is shown by the following case. In 1807, Ensign Maxwell, of the Lanarkshire Militia, was tried before the High Court of Justiciary in Scotland for the murder of Cottier, a French prisoner of war at Greenlaw, by improperly ordering a sentinel to fire into the room where Cottier and other prisoners were confined. Ensign Maxwell had the military charge of over 300 prisoners, confined in a building of no great strength. The prisoners were of a turbulent character, and to prevent their escape an order was given that all lights in the prison should be put out at 9 o'clock, and that if this was not done at the second call the guard was to fire upon the prisoners, who were often warned of this order. Ensign Maxwell having observed one night, on which there had been some disorder among the prisoners, a light burning beyond the appointed hour, twice ordered it to be put out, and, not being obeyed, directed the sentry to fire, but the musket merely snapped. Ensign Maxwell repeated the order, the sentry fired again, and Cottier received his mortal wound. At this time there was no symptom of disorder in the prison, and the prisoners were all in bed.

Case of Ensign Maxwell, 1807.

93. The general instructions issued from the Adjutant-General's office for the conduct of the troops guarding the prison contained no such order as that upon which Ensign Maxwell had acted ; and it appeared to be a mere verbal one which had from time to time in hearing of the officers been repeated by the corporal to the sentries on mounting guard, and had never been countermanded by those officers, who were also senior to Ensign Maxwell. The Lord Justice Clerk laid it down that Ensign Maxwell could only defend himself by proving specific orders, which he was bound to obey without discretion, and which called upon him to do what he did ; and the jury found him guilty of the minor offence of culpable homicide, with a recommendation to mercy. He was sentenced to nine months' imprisonment (b).

Ruling of the Lord Justice Clerk as to orders given.

(a) 28 Howells's State Trials, 51.

(b) Buchanan's "Remarkable Cases," Part II, 3.

Ch. VIII.

R. v.
Thomas.

94. Again in the case of *R. v. Thomas* (a) the prisoner, a sentinel on board Her Majesty's ship *Achille*, had been ordered to keep off all boats unless they had officers in uniform in them, or unless the officers on deck allowed them to approach; and he received a musket, three blank cartridges, and three ball cartridges. The boats pressed, upon which he repeatedly called to them to keep off; but one of them persisted and came close under the ship, and he then fired at a man in the boat and killed him. It was put to the jury to find whether the sentinel did not fire under the mistaken impression that it was his duty, and they found that he did. But the case being reserved for the opinion of the judges, their Lordships were unanimous that it was murder. They thought it, however, a proper case for a pardon; and further, they were of opinion that if the act had been necessary for the preservation of the ship, as if the deceased had been stirring up a mutiny, the sentinel would have been justified.

How far
specific
commands
can excuse
subordi-
nate.

95. How far a subordinate could plead the specific commands of a superior officer—such commands being not obviously improper or contrary to law—as justifying an injury inflicted on a citizen, is somewhat doubtful; though there are cases in which the fact of the orders having been given would no doubt prove the innocent intent of the subordinate, and lead practically to his acquittal on a criminal charge (b).

Criminal
liability for
offences
committed
out of the
realm.

96. With respect to criminal liability for oppression and similar offences committed out of the realm it was enacted by 11 Will. III, c. 12 (c), that any governor or commander-in-chief of any colony beyond the seas guilty of oppression to any of His Majesty's subjects, or of any other crime within their respective governments or commands, might be tried and punished by the Court of King's Bench in England or by special commissioners. And the statute 42 Geo. III, c. 85, makes a similar provision for the trial and punishment of persons employed in the public service out of Great Britain in any similar military office or capacity (d).

Case of Sir
Thomas
Picton,
1806.

97. General Sir Thomas Picton was tried under this Act in 1806 for having, while Governor of Trinidad, given an order for the infliction of torture on a female from whom it was desired to obtain evidence in support of a prosecution for a robbery committed in her master's house. General Picton's defence was that the occurrence took place in the ordinary course of judicial proceedings, over which he presided as Governor, and that torture was allowed in such cases by the law of the island. The case was tried twice, and was again elaborately argued on the special verdict found at the second trial, but judgment was never prayed (e). It appears, however, to have been thought at the time that had the opinion of the court been delivered, judgment would have been given against General Picton, though the jury found that by the law of Spain torture existed in Trinidad at the time of the cession of that island to Great Britain, and that no malice existed in the mind of the defendant, save so far as might be inferred from the acts complained of, if found to be illegal (f).

(a) Russell on Crimes, 6th edn., iii. 94, 4 M. & S. 442.

(b) See *R. v. Trainer*, 4 F. and F. 105; *Dawkins v. Lord Rokeby*, 4 F. and F. 806; *Keighley v. Bell*, 4 F. and F. 763; *R. v. Hutchinson*, 9 Cox Cr. Ca. 555.

(c) 11 & 12 Will. III, in Ruffhead.

(d) See also the two Acts 24 Geo. III, sess. 2, c. 25, s. 64, &c., and 26 Geo. III c. 57, making elaborate provisions for the trial in Great Britain of British subjects for extortion and misdemeanors committed in India.

(e) 30 Howell State Trials, 226.

(f) 30 Howell State Trials, 955, note.

98. With respect to the question how far defect in the jurisdiction or procedure of the court by whom a sentence is given, or want of authority, irregularity, or excess in the person by whom the sentence is executed, may render the court or person executing the sentence criminally responsible, there is but little to be found in the books. There appears, however, to be authority for the following propositions :—

Ch. VIII.
Execution
of sen-
tences, &c.

(i.) If, first, the court who passed the sentence had no colour of jurisdiction in the matter, all its proceedings are a mere nullity, and both the court and the officer who executed the sentence are mere wrong-doers; and in the case of an execution the officer may perhaps in strictness of law be guilty of murder as a principal, and the members of the court may be guilty of a misdemeanor, and also as accessories to the murder (a).

(ii.) If, secondly, the court had no jurisdiction, but it acted under colour of a writ or commission, such as might lawfully be issued, then although the writ or commission be irregular and so the sentence erroneous and voidable, it seems that it is not a nullity, and that neither the court nor the officers who execute the sentence can be treated as mere wrong-doers, though the court may be guilty of a misprision (b). If, again, the court had jurisdiction, but passed an erroneous sentence, neither the judge nor an officer who innocently executes the sentence is criminally liable (c).

(iii.) The sentence must be executed by the proper officer, and if any person who is not duly authorised executes it he is a wrong-doer (d).

(iv.) The execution must pursue the judgment, subject to any lawful alteration by the Crown, for if a man is beheaded who ought to have been hanged, the officer is a wrong-doer (e).

There appears to be no authority for applying the doctrine of trespass *ab initio* to the case of irregular execution of a sentence, and it would seem that the officer would be liable only for so much of his acts as is in excess of his authority. Malice (in the popular sense of the word) in the officer appears to be wholly immaterial, so long as he keeps within the limits of his authority, for he is bound to execute the sentence; but if he grossly exceeds the measure of the sentence which he is authorised to inflict, and if he so barbarously flog a man sentenced to flogging as by plain excess to cause his death, he will be a wrong-doer as to the excess (f).

(vi.) *Protection of Persons Acting under the Army Act and other Acts.*

99. It remains only to notice that officers are to a certain extent protected against actions by s. 170 of the Army Act, which provides that an action against any person for any act done in the execution, or intended execution, of the Act, or in respect of any alleged default in the execution of the Act, must be commenced within six months. Tender of amends before the action may, in lieu of or in addition to any other plea, be pleaded. Such

Protection
of persons
acting
under
Statute.

(a) Hale, Pleas of the Crown, i. 497, 501. Steph. Dig. Crim. Law (6th Edn.) Art. 218.

(b) Hale i. 497-509; Hawkins, Bk. i. ch. 28, s. 6.

(c) Hale i. 501.

(d) Hale i. 501, Coke, Inst. i. 128.

(e) Coke, Inst. iii. 52, 211; Hale i. 501.

(f) Hawkins, Bk. i. ch. 28, s. 6, and see *Governor Wall's case*, *supra*, paras. 89-91.

Ch. VIII. actions, as well as actions against members of a court-martial in respect of a sentence of such court, can only be brought in one of the superior courts in the United Kingdom (which courts have jurisdiction wherever the matter complained of occurred) or in a supreme court in India, or in a colonial court of superior jurisdiction in the colony where the matter occurred (*a*).

Application
of chapter.

100. The statements of law in this chapter apply to England, but the law in Scotland, Ireland, and the colonies may be considered as very similar.

(*a*) The effect of the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61) appears to be, by s. 2, to repeal A.A. 170 (2), and by s. 1 to re-enact similar provisions with the addition of the provisions as to costs contained in paragraphs (*b*) and (*d*) of s. 1.

The protection afforded by the Public Authorities Protection Act extend to officers of the Territorial Force.

CHAPTER IX.

HISTORY OF THE MILITARY FORCES OF THE CROWN.

1. The object of this chapter is to give a short summary of the history of the Military Forces, and principally of those in England. For details the authorities cited in the notes must be consulted (*a*). Object of chapter.

2. The history of the Forces may be divided into two main periods: the one prior, and the other subsequent to the Restoration of Charles the Second in 1660. It was not until after 1660 that a Standing Army was raised, and the Militia organised under Act of Parliament. Before 1660 the organisation of the Forces was much less systematic, although it rested on laws which have come down to the present time, and therefore deserve notice. Two periods in history of forces.

1. GENERAL SKETCH OF HISTORY.

First Period.—General and Feudal Levies.

3. Before the Norman Conquest, all freemen between the ages of 15 and 60 who were capable of bearing arms were bound to go forth to the host (*fyrd*), or general levy, at the king's summons. *Fyrd-fare* was one of the three liabilities of all owners of land in England (*b*). Those guilty of neglecting it were subjected to a very heavy penalty called *fyrd-wite*, which might extend even to the forfeiture of the whole of their land. The levy of each shire took the field, down to the Norman conquest, under its alderman or military chief of the shire, and after the Conquest under the sheriff (*c*). General liability to service in early times.

4. This general levy of all able-bodied (*d*) men in each county had a double aspect. As a civil force it was known as the *posse comitatus* which the sheriff was entitled to call on to arrest criminals and suppress riots; and the obligation to serve in it was closely connected with the obligation attaching to every man of keeping watch and ward, and of following the hue and cry, which was directed against criminals (*e*). In its other aspect it was Double aspect of this service.

(*a*) See Clode's *Military Forces of the Crown* (Murray, 1869) which contains many original authorities, chiefly for the period subsequent to 1660. For the earlier period many extracts from and references to original authorities are contained in Grose's *Military Antiquities*, and in Scott's *British Army*. The powers of the Crown for the defence of the realm are enumerated and discussed in the *Ship Money Case* (see especially St. John's argument), Howell's *State Trials*, iii. 825, summarised in Clode, *Mil. Forces*, i. 354, 355. The constitution of the general levy and the feudal army, and the incidence of feudal tenure, are described in the ordinary histories, such as Hallam's *Middle Ages*, and *Constitutional History*; Lingard's *History*; Taswell Langmead's *Constitutional History* (1st edn.); and especially Stubbs' *Constitutional History* (popular edn.) and also in legal books, such as Coke on Littleton, and Blackstone's *Commentaries*. The chapters in *Social England* on military matters and Professor Oman's *History of the Art of War* may also be consulted.

(*b*) Afterwards called the *trinoda necessitas*, the other two liabilities being to maintain fortifications and to repair bridges. In some cases the age mentioned is 16 (Stubbs, *Const. Hist.* i. 102 &c.).

(*c*) See Stubbs, *Const. Hist.* i. 209, 469.

(*d*) Stubbs, *Select Charters*, 370-3; Stubbs, *Const. Hist.*, i. 209, 633, ii. 220; Grose, *Mil. Antiq.*, i. 9; 13 Edw. I (Stat. Winton), st. 2, c. 6; 3 & 4 Edw. VI, c. 5; 1 Mar. sess. 2, c. 12; 1 Eliz. c. 16.

(*e*) It was known as the *ban* or *fyrd* or expedition, Stubbs, *Const. Hist.*, i. 81, 209, 494, 633. See *Commissions in Rymer's Fœdera*.

Ch. IX. a military force, and was called out, under the sheriff or some other officer of the Crown, to defend the realm in civil war or against foreign foes. The force was liable to serve only in the kingdom, and, except in case of invasion, only in its own county. Sometimes it was called out in all the counties; at other times, in particular counties only, as, for instance, in the northern counties, to resist the Scots, or in the midland counties, to resist the Welsh. The general levy was repeatedly called out by the Norman and Angevin kings (1066 to 1204) for the suppression of internal rebellion or of border warfare against the Welsh and Scots. It was unsuitable for warfare beyond the seas (*a*). But it apparently served as a mode of obtaining troops down, at any rate, to the fourteenth century (*b*).

Organisation of general levy.

5. The general levy was organised by divers ordinances and statutes, which determined the arms and, in the case of the more wealthy, the horses which each man was to provide, in accordance with the amount of his land and goods. The sheriffs, mayors, and justices, as well as the constables annually appointed for the purpose in each hundred, were to enforce the obligation to serve and provide arms, and twice every year were to inquire into the arms provided, or, as it was termed, to hold "views of armour." Writs were often addressed by the King to the sheriffs and others to array or summon before them the men liable to service (whom from being sworn to keep arms were called *jurati ad arma*), and to punish defaulters; and the writ often directed such arrayers, or other persons named in it, to lead the force on active service (*c*).

Lieutenants in counties.

6. In the time of Edward the Sixth, we find lieutenants appointed in the counties to array, or lead, or both; and after the reign of Mary, such lieutenants, now commonly known as Lords Lieutenant, were usually appointed for those purposes (*d*).

Right of purveyance.

7. Closely connected with the general levy was the Crown's prerogative of purveyance, which enabled the Crown to enforce the supply of carriages, carpenters, smiths, and other artificers, as well as of victuals, for military purposes (*e*).

Thegns.

8. Even before the Norman conquest the general levy took long to raise and was difficult to keep together, especially when operating outside the boundary of its own petty kingdom. For a more trustworthy, better-armed, and more permanent force, the old English kings relied on their military dependents, to whom

(*a*) It was summoned by William II to Hastings in 1094 to cross for a campaign in France, but was dismissed.

(*b*) See Statutes, 1 Ed. 3, cc. 7, 15; 18 Ed. 3, st. 2, c. 7.

(*c*) Hen. II, Assize of Arms; Stubbs, Select Charters, 153, and the statutes 13 Edw. I (Stat. Winton), c. 6; 34 Edw. I, st. 2 in common editions; 2 Edw. III, c. 6; 5 Hen. IV, c. 3; 3 Hen. VIII, c. 3; 33 Hen. VIII, cc. 5, 9; 4 & 5 Phil. and Mary, c. 2. See also Acts referred to in the next note. See further, Grose, Mil. Antiq., i. 2, 9, 74-96; Clode, Mil. Forces, i. 16, 345-57; Stubbs, Select Charters, 281, 343, 370-3; Stubbs, Const. Hist., i. 526-7, 632, 634, ii. 293; Writs in Rymer's Fœdera and Palgrave's Parliamentary Writs.

(*d*) See Acts 3 & 4 Edw. VI, c. 5, s. 13, 1 Mar. sess. 2, c. 12, s. 12; 4 & 5 Phil. and Mar. c. 3, 1 Eliz. c. 16. Clode, Mil. Forces, i. 32; Scott, British Army, i. 329, 348; Grose, Mil. Antiq., i. 79. Strype (Ecclesiastical Memorials ii. 278), says that lieutenants were first appointed in 3 Edw. VI (1549), and were appointed annually. They are spoken of by Camden (Britannia, i. clxvii, clxxxix), as appointed in troublesome times, and by Holinshed (Chronicles i. 155), as appointed in time of necessity. They were also appointed for several counties. An abstract of the authority given to a lieutenant by his commission is to be found in Lodge's Illustrations of British History, ii. 325; see also 419 to 426; see also Scott, Brit. Army, i. 348. After 1660, they became statutory officers appointed for the militia, see below, para. 84.

(*e*) Stubbs, Select Charters, p. 359, and divers writs in Rymer's Fœdera; Stubbs, Const. Hist., ii. 564; Clode, Mil. Forces, i. 347. Grose, Mil. Antiq., i. 86. The Crown's right of purveyance was restrained by many Acts, and ultimately abolished by 12 Cha. II, c. 24.

they had granted land on the condition of military service. These warriors were originally known as *Gesiths*, but from the ninth century onward that name is superseded by *thegn*. Alfred and his successors, under the stress of their Danish wars, incorporated in the thegns all the men of substance in the realm, whatever their origin, wealthy yeomen and merchants no less than members of ancient noble families (a).

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9. The Norman conquest in 1066 changed the condition of the upper ranks of the military force by substituting a wholly feudalized military aristocracy for the semifederal thegnhood. The whole of England was carved out by William I into a number of military fiefs held from the Crown. Some were small, but many were very large—earldoms and baronies—the holders of which cut up their vast domains into smaller military fiefs or knights-fees dependent upon themselves. The holder of a military fief might therefore be either a tenant in chief holding directly from the Crown, or a sub-tenant holding under some great earl or baron. All alike were bound to attend the king at their own expense on horseback and in armour with their retainers, who might be either mounted or on foot (b). After 1289 (c) grants of land could only bind the holder to render service to the king or other superior lord, and not to the grantor of the land, and consequently the number of the retainers of the inferior lords gradually diminished. Some of the great earls and barons had an establishment of domestic knights not holding lands and entirely dependent on them.

Feudal levy.

The period of feudal service was limited by custom to forty days in each year, a term too short for foreign expeditions, and consequently the forces so raised were often induced by high pay to continue to serve as mercenaries (see below, para. 24). Though the earlier kings successfully demanded service abroad as well as service at home, the obligation to serve abroad was challenged at an early date (1198), and as time passed the feudal tenants displayed increasing reluctance to serve out of the kingdom and at length refused to do so (d). The knights who on horseback and in a coat of mail formed the most prominent feature of warfare in the Middle Ages served under the feudal levy. The infantry were either the retainers of those knights, or raised from the general levy, or by contract (see below, para. 24). The lancers and archers, however raised, were taken chiefly from the middle classes and highly paid (e).

10. Personal service formed the basis alike of the feudal and of the general levy, but the obligation to serve in the general levy rested on every man as a citizen, or as it was termed "on every man within the allegiance of the king." The feudal levy was dependent on homage or on tenure under some feudal lord, whether the king or some great earl or baron. Obviously there must always have been many feudal tenants unable to render personal service,

Composition in lieu of personal service.

(a) Stubbs, Const. Hist., i. 172, 210.

(b) Grose, Mil. Antiq., i. 8, 120; Scott. Brit. Army, i. 119, 138.

(c) By the statute known as "*Quia Emptores*" (18 Edw. I. c. 1), which, while authorising the sale of lands, provided that the purchaser of land (called in the Act the *feoffee*) should hold it of the chief or superior lord and not of the vendor (called in the Act the *feoffor*), and should render to the chief or superior lord the same services which the vendor rendered before the sale.

(d) Stubbs, Const. Hist. i. pp. 284 ff. ii. pp. 293. The feudal levy appears to have been frequently summoned for service beyond the seas down to 1300, but fell into disuse before 1400. In 1198, Bishops Hugh, of Lincoln, and Herbert, of Salisbury, and in 1213 the northern barons, refused foreign service as not obligatory under their tenure, and it was opposed more seriously by the Earls of Norfolk and Hereford in 1296, 1297.

(e) Hallam, Const. Hist., ii. 120; Stubbs, Const. Hist. ii. 297

Ch. IX. and the calling out under the general levy of the whole population capable of bearing arms can but very rarely have been desirable or possible (*a*). Service by deputy, or payment in lieu of personal service, and the calling out of a quota only, were accordingly allowed from very early times (*b*).

In case of
feudal levy.

11. In the case of the feudal levy, we must first notice the clergy, who held their lands by the tenure known as *Frankalmoign*, and who, as a rule, performed their military service by deputy or paid a composition (*c*), though cases of military prelates are well known in history. Women also, and infants, and other feudal tenants who were unable to render personal service, either found substitutes or paid a composition (*d*); and the payment of a composition in lieu of service was at an early date (*e*) extended from those who were unable to those who were unwilling to serve in person.

Scutage or
Escuage.

12. Henry I appears to have been the first to require a number of knights, instead of serving in person for forty days, to equip and maintain a knight in service for a longer period: and Henry II began (about 1156) to levy a money composition for personal service, under the name of Scutage or Escuage (*f*). This composition was probably levied at first only by agreement between the king and his subjects; but it subsequently became an abuse and gave rise to remonstrances as a tax levied by royal authority only; and from 1215 until the end of the reign of Edward II (1327) it was levied only under assessment by Parliament (*g*). With the decay of feudalism the tax fell into disuse (*h*); and it was ultimately, together with tenure by knight service, abolished during the Commonwealth, and finally extinguished on the Restoration in 1660 (*i*).

In case of
general
levy, quota
and contri-
butions to
expenses.

13. Similarly, in the case of the general levy, the practice arose of calling on a certain quota only from each county to serve in person, and of requiring those not so called on to supply with arms and victuals, and to defray the expenses of those who served in person (*j*). This developed into a sort of tax on the county or township, not under the authority of Parliament, and continued until comparatively recently, in the form of a liability on the part of the county to pay a part of the expenses of the militia (*k*).

Mode of
calling out
feudal levy.

14. Both the feudal and the general levy when summoned for war, were summoned by writ from the Crown.

These writs did not always distinguish between those liable to serve under the feudal levy and those liable under the general

(a) Stubbs, *Const. Hist.*, ii. 290.

(b) As early as Henry II.

(c) Grose, *Mil. Antiq.*, i. 5; Scott, i. 138, 248. See, however, writs requiring personal service in Rymer's *Fœdera*; one is printed by Grose, *Mil. Antiq.*, i. 5.

(d) Grose, *Mil. Antiq.*, i. 6, 7.

(e) As early as Henry I.

(f) Stubbs, *Select Charters*, 281, 343, 364; *Const. Hist.*, i. 623, 626, 632; ii. 291; Grose, *Mil. Antiq.*, i. 7, 8; Scott, *Brit. Army*, i. 119, 138, 245. Escuage is in Latin *Scutagium*, from *scutum*, a name given to a fief held on military service.

(g) *i.e.*, "the common council of the realm." The Great Charter granted by John in 1215 required this; the omission of the requirement from later charters did not at first alter the practice. Stubbs, *Const. Hist.*, i. 573; Grose, *Mil. Antiq.*, i. 7; Coke, *Inst.*, i. 72 b, 74 b, note 37; Stubbs, *Select Charters*, 293, 343, 364.

(h) Coke, *Inst.*, i. 74 b, note 37.

(i) By Act 12 Cha. II, c. 24, together with other feudal incidents. Excise duties on beer were granted to the Crown as an equivalent.

(j) Stubbs, *Const. Hist.*, ii. 297. Stubbs, *Select Charters*, 359. During the great French wars, 1338 to 1453, the main part of the armies led by Edward III and his successors were mercenaries (see below, paragraphs 24, 25). But some of them were still raised under commissions of array (see 1 Ed. 3, cc. 7, 15; 18 Ed. 3, c. 7).

(k) Part of this was "coat and conduct money," said to have begun in the reign of Queen Elizabeth, with a promise of repayment by the Crown, and formed a subject of dispute between Charles I and the Parliament; Scott, *Brit. Army*, i. 448; Clode, *Mil. Forces*, i. 21; Cobbett, *Parliamentary History*, ii. 549, 562, 642, 651, 656.

levy, and those who served under the claim of purveyance (a); though strictly in the case of the feudal levy, a special summons ought to be issued to each baron, bishop, and abbot, and served by the sheriff, while those of lower rank were summoned by a general proclamation of the sheriff made in obedience to the royal writ (b). The writs followed the latter practice as to the quota, and directed the commissioners under them to "elect" a number of men, that is, virtually to press them to join the army for general service. These writs in the reign of Edward I became known as "commissions of array" (c).

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15. So far as these commissions were to raise a force for the defence of the realm against invasion, they were perfectly legal; but even if they were always legal in form, they were used, not merely for the legal purpose of raising troops to resist invasion, or to invade Scotland (which might be treated as resisting invasion), but also for the purpose of raising troops for foreign service. They threw on the counties the burden of finding soldiers for and paying the expenses of foreign wars, and thus indirectly taxed them without consent of Parliament, a practice which—after the rise of Parliament at any rate—was unconstitutional.

Questions as to legality of Commissions for purpose of foreign service.

16. This grievance was accordingly resisted by Parliament; and by a series of Acts beginning in 1327, it was provided that men should not be required to serve out of their counties except in the case of invasion; that men-at-arms, hoblers, and archers chosen to serve out of England should be paid by the Crown after leaving their counties; and that no man should be constrained to find men-at-arms, hoblers, or archers, unless bound by feudal service, or under the authority of Parliament (d).

Resistance of Parliament.

17. During the Wars of the Roses and the reigns of the Tudors troops were raised in the most irregular manner. The greater part of the real fighting was done by volunteers hired on private account by rival barons, and by retainers gathered under the custom of "livery and maintenance," under which great men gave their badge and livery to their smaller neighbours, and undertook to champion their quarrels, the receiver, on the other hand, agreeing to come out in arms to aid his protector whenever the latter took the field. During these wars constitutional rights were ignored and forgotten, and not only were commissions of array continued, but the practice of impressing soldiers under them became so common, that impressment was assumed to be the right of the Crown (e); while certain Acts in the time of Henry VIII and of Philip and Mary increased and enforced the liability to provide horses and arms in proportion to property (f), and to practice

Impressment during Wars of the Roses and in time of Tudors.

(a) This confusion began as early as Henry III.

(b) Grose, *Mil. Antiq.*, i. 65; Stubbs, *Const. Hist.*, ii. 296; Stubbs, *Select Charters*, 281.

(c) Stubbs, *Const. Hist.*, ii. 297. Hallam, *Const. Hist.*, ii. 133, states the earliest commission of array as of 1324 and the last of 1527. But see Stubbs, *Select Charters*, 359, and *Const. Hist.*, ii. 297, and the commissions of musters of Elizabeth's reign, Grose, *Mil. Antiq.*, i. 79.

(d) Stubbs, *Select Charters*, 359; *Const. Hist.*, ii. 297, 417, 421, 568; iii. 285-7; Lingard, iv. ch. 2; *Acts 1 Edw. III*, st. 2, cc. 5, 7, 15, 18 *Edw. III*, st. 2, c. 7; 25 *Edw. III*, st. 5, c. 8; 4 *Hen. IV*, c. 13. The form of commissions of array was settled in Parliament in 5 *Hen. IV*, A.D. 1404. Stubbs, *Const. Hist.*, iii. 281. "Hobler" was a light cavalry soldier; Grose, *Mil. Antiq.*, i. 106; Scott, *Brit. Army*, ii. 22, 329. For cases of armies raised at the charge of counties, see Sir R. Cotton's paper, printed in Grose, *Mil. Antiq.*, i. 74, and the Ship Money Case in Howell's *State Trials*, iii. 825.

(e) Stubbs, *Const. Hist.*, iii. 285; Rymer's *Fœdera*; Hallam, *Const. Hist.*, ii. 130. See 1 *Edw. III*, st. 2, c. 15.

(f) 33 *Hen. VIII*, cc. 5, 9; 4 & 5 *Phil. and Mar.* c. 2. The last Act repealed the old Act, except 33 *Hen. VII*, c. 9, as to providing arms. It also required cities and towns to provide arms at the common charge. Compare Stubbs, *Select Charters*, 154.

Ch. IX. archery (*a*), and another Act of Philip and Mary imposed a penalty for not attending musters of commissioners authorised to muster men and levy the ablest for the wars (*b*); and we learn from the Acts in Elizabeth's reign (*c*) as well as from Shakspeare (*d*), that impressment was then commonly considered to be one of the prerogatives of the Crown (*e*).

Repeal of
Armour
Acts in
reign of
Jas. I.

18. In 1604, the first Parliament of James I repealed the above-mentioned Acts of Henry VIII and of Philip and Mary (*f*) as regards the provision of armour and horses: and as that repeal was held to revive the older Acts respecting the provision of armour, those Acts were finally repealed in 1624, the last year of the reign of James I (*g*).

Commissions of
musters,
and trained
bands.

19. The liability to serve in the general levy, however, still continued, and was still enforced by means of commissions of array, which gradually developed into a rather different form under the title of Commissions of Musters (*h*). These commissions directed the commissioners to register and muster all persons liable to provide horses, arms, or soldiers, and to select a convenient number of such persons to serve in person at the charge of their counties for the service and defence of the Crown, who were to be sorted into bands, and trained and exercised at the charge of the different parishes in the county. These commissions and this description of training appeared to have assumed at the end of the sixteenth and the beginning of the seventeenth century a quasi-permanent form under lieutenants of counties or other commissioners, and the bands trained under them became known as Trained or Train Bands, and were mustered annually. At the same time there existed, side by side with the trained bands, and in more or less connection with them, voluntary bodies, such as the Honourable Artillery Company in London, and similar bodies elsewhere, which doubtless owed their origin to the fact of its being fashionable to possess military acquirements (*i*).

(*a*) 3 Hen. VIII, c. 3; 33 Hen. VIII, c. 9, containing an order to practise archery, with a prohibition of unlawful games, as bowles, tennis, coitinge, &c.

(*b*) 4 & 5 Phil. and Mar., c. 3. This assumed the right to muster and impress.

(*c*) 5 Eliz. c. 5, s. 24; 35 Eliz. c. 4; 43 Eliz. cc. 3, 9.

(*d*) Shakspeare, Hen. IV, Part I, Act 4, sc. 2, Falstaff says: "I have misused the king's press damnably; I have got in exchange of 150 soldiers 300 and odd pounds. I press me none but good householders, yeomen's sons; inquire me out contracted bachelors, such as had been asked twice on the banns; such a commodity of warm slaves as had as lief hear the devil as a drum; such as fear the report of a culverin worse than a struck deer, or a hurt wild fowl * * * and they have bought out their services; and now my whole charge consists of * * * such as indeed were never soldiers, but discarded unjust serving men, younger sons to younger brothers, revolted tapsters, and ostlers trade-fallen; the cankers of a calm world and long peace; ten times more dishonourably ragged than an old-faced ancient; and such have I to fill up the rooms of them that have bought out their services, that you would think I had 150 tattered prodigals lately come from swine-keeping. * * * Nay, and the villains march wide betwixt the legs, as if they had gyves on; for indeed, I had the most of them out of prison."

(*e*) Hallam, Const. Hist., ii. 130, 131; Clode, Mil. Forces, i. 17; Grose, Mil. Antiq., i. 97; Rushworth, Historical Collections, i. 152.

(*f*) 33 Hen. VIII, c. 5; 4 & 5 Phil. and Mar. c. 2, repealed by 1 James I, c. 25, s. 7. See Hallam, Const. Hist., ii. 133.

(*g*) By 21 Jas. I, c. 28; See Scott, Brit. Army, i. 394.

(*h*) These musters are distinct from the musters of troops in pay.

(*i*) Grose, Mil. Antiq., i. 79; ii. 324. Raikes, in his Hist. of Hon. Artill. Compy., i. 28-143, mentions the organisation of the trained bands in 1605, and that they were used to suppress riots. Provisions were made for storing and repairing the arms; Rymer, A.D. 1612; Cobbett, Parl. Hist., ii. 782, 783, 850, 934; Clode, Mil. Forces, i. 29. Camden speaks of the commission to the lieutenant as a permanent commission of array; the former seems practically to have superseded the other. See also the commissions given to lieutenants, Lodge's Illustrations of Brit. Hist., ii. 325. The commission there mentioned gives the lieutenant powers similar to those of the commission of musters and also power to use martial law, and to make a provost-marshal. See also Scott, Brit. Army, i. 326-8, 379, 394, 402-407. An abstract of the commission issued before the Spanish Armada is printed in Scott, Brit. Army, i. 345. See also Commissions in Rymer. The modern commission to a lord lieutenant (Clode, Mil. Forces, i. 586), is expressed to be issued in pursuance of the Militia Acts.

20. During the reign of Charles I, the commissions of musters were used for the purpose of exacting contributions in money and arms from the counties, and so taxing them without the consent of Parliament. These exactions were felt to be grievances, and complained of in Parliament, and, together with commissions for trying persons by martial law in time of peace and the practice of billeting, were, in 1628, declared to be illegal by the Petition of Right (*a*). The exactions nevertheless continued, and, together with the impressment of soldiers and the powers of the lieutenants of counties, formed the subject of further complaints in the Parliament of 1640 (*b*).

Ch. IX.
—
Commissions of musters, a grievance under Charles I.

21. In the Long Parliament in the same year, Charles I, though at first claiming the power of impressment as the ancient and undoubted prerogative of the Crown, assented to an Act declaring impressment illegal (*c*). This Act, after reciting rebellions in Ireland, which would endanger not only that kingdom, but also the kingdom of England, unless "a course be taken for the preventing thereof, and for the raising and pressing of men for those services," and also reciting that by the laws of the realm none of His Majesty's subjects ought to be impressed or compelled to serve out of his country, except in case of necessity or invasion, or except they be otherwise bound by the tenure of their lands, gave statutory authority to impress soldiers for service in Ireland.

Impressment declared illegal by Long Parliament.

22. The Parliaments of Charles I, while protesting against the exactions enforced by the lieutenants of counties and the illegality of impressment, did not complain of the mustering of the trained bands; and the value of the trained bands, or militia as they now began to be called, and the necessity for exercising them, and providing them with arms and ammunition, were recognised on many occasions by the Long Parliament (*d*). Parliament, however, was extremely unwilling to leave the command of the militia under the control of the Crown exercised through the lieutenants of counties, and this question was one of the principal matters in dispute at the time of the rupture between Charles I and his Parliament (*e*).

Trained bands or militia under Charles I.

23. The mode in which troops were raised during the Civil War and the Commonwealth was necessarily irregular, and need not be noticed here.

Troops raised irregularly during Civil War.

24. Before passing to the second period after the Restoration in 1660 a short mention must be made of three other classes of soldiers raised in the earlier period, and of the mode of enforcing the service of soldiers:—

Other classes of soldiers.

- (i.) Holders of offices, pensions, lordships, or lands from the Crown were, at the end of the fifteenth century, made liable to serve at home or abroad, on pain of forfeiture (*f*).
- (ii.) Sometimes also criminals were pardoned, or debtors released, on condition of serving as soldiers (*g*).

Crown grantees.

Criminals and debtors.

(a) 3 Cha. I, c. 1.

(b) As to complaints in Parliament, in addition to the complaints as to ship money. Cobbett, *Parl. Hist.*, ii. 233-5, 549, 561, 642, 652-5.

(c) 16 Cha. I, c. 28. As to previous proceedings in Parliament, see Cobbett, *Parl. Hist.*, ii. 968, 977-981, 1087.

(d) Cobbett, *Parl. Hist.*, ii. 655. See also 782-783, 849, 934.

(e) Cobbett, *Parl. Hist.*, ii. 1069, 1243. Hallam, *Const. Hist.*, ii. 133-6. Gardiner, *Hist. of Eng.*, x. 95-110, 186-193.

(f) By 11 Hen. VII, c. 18; 19 Hen. VII, c. 1; Clode, *Mil. Forces*, i. 337, 350.

(g) Grose, *Mil. Antiq.*, i. 73; Scott, *Brit. Army*, i. 282.

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Mer-
cenaries.

(iii.) The third and most important class was that of men who received pay for their services, who were termed "mercenaries," or "stipendiaries," terms which, though originally like the term "soldiers" (*a*), meaning those who were paid for their services, came at an early period to mean those who adopted arms as a profession, and served solely for pay. The convenience of employing mercenaries is obvious, having regard to the limitations on the service of the general levy and of the feudal levy mentioned above; and from the date of the Conquest in 1066 mercenaries formed part of the forces of the Crown. The distinction, however, between these troops and those raised under the feudal or general levy was not always a wide one, as men raised under those levies were often induced by liberal payment to serve beyond the seas, or for more than 40 days, and doubtless often fell into the class of mercenaries.

Raising of
mercenaries, by
indentures or con-
tracts.

25. Mercenaries were usually raised by an indenture or contract between the king and some person of high position, who was able by his influence or wealth to obtain soldiers. The men so raised were at first chiefly foreigners; and as their employment in England was not only strongly objected to, but was rendered less necessary by the liability of the inhabitants of the realm to service at home, they were almost entirely employed on foreign service. After the raising of men compulsorily under commissions of array was, as before mentioned, restrained by Parliament in the reign of Edward III, the practice of raising troops by indentures became more common; in fact, after the beginning of the reign of Henry V, the larger part of the forces of the Crown were so raised (*b*).

Enlistment
to serve the
Crown.

26. At first the soldiers so raised were enlisted to serve the officer who raised them, but after 1491 (7 Henry VII), if not before, they were enlisted to serve the king (*c*), and as early as the time of Charles I, enlistment was carried on under beating orders issued by the Crown (*d*). The mode of raising troops by contract with an individual, sometimes for a sum of money, sometimes on condition of the contractor having the appointment of the officers of the force raised continued (*e*), notwithstanding the change of enlistment from a contract to serve the officer to a contract to serve the Crown, and notwithstanding that the establishment of a standing army altered the practice of enlisting for a particular war to that of enlisting for continuous service. Enlistment, however, was strictly regimental, that is, for service in the particular regiment with which the recruiting officer was connected.

Enforce-
ment of
obligation
to serve.

27. The obligation to serve (except in the case of a breach of that obligation by desertion in the field) was not enforced in military courts, but by civil penalties; in the case of the general levy by

(*a*) Soldier being derived from "solidus" "solde" or pay, "soldato" in Italian meaning a hired man. For *conductitii*, or hired men, mentioned also in Ducange (the *condottieri* of Italy), there seems to be no English equivalent.

(*b*) Grose, *Mil. Antiq.*, i. 57-77; Hallam, *Const. Hist.*, ii. 130; Stubbs, *Const. Hist.*, iii. 557; Magna Carta of King John, Art. 41; Stubbs, *Select Charters*, 294. In Rymer's *Fœdera*, there are contracts between Hen. I and Earl of Flanders, for supplying troops. See also Rymer, A.D. 1284, 1295; Grose, *Mil. Antiq.*, i. 188; Scott, *Brit. Army*, i. 264, 279.

(*c*) See preamble to 18 Hen. VI, cc. 18, 19; 7 Hen. VII, c. 1; 3 Hen. VIII, c. 5, and remarks on these Acts in "*The Case of Soldiers*," Coke's Reports, Part VI, 27a.

(*d*) So called from the expression at the beginning of the order, "to raise troops by beat of drum," which was derived from the actual use of the drum. See Clode, *Mil. Forces*, ii. 580-584.

(*e*) Clode, *Mil. Forces*, ii. 6, 581.

fine, seizure of property, and imprisonment, and in the case of the feudal levy by fine and forfeiture of the fief held on condition of rendering military service (*a*). Indeed, the Crown derived an income from distraining owners of fiefs to assume knighthood (*b*). Moreover, the high-handed proceedings of fine and imprisonment which we find, even after the reign of Queen Elizabeth, exercised in other cases, were doubtless exercised for the purpose of compelling persons to serve.

Ch. IX.

28. In the case of mercenaries, these powers were insufficient and, therefore, a soldier deserting from the captain with whom he contracted to serve, and who was under an indenture with the Crown to provide a certain number of soldiers, was in 1439 declared by Parliament to be punishable as a felon, that is, in a civil court (*c*), and at a later date this enactment was extended to soldiers who had contracted to serve the Crown (*d*).

In case of mercenaries.

29. The punishment of desertion in a civil court became practically unnecessary after the Revolution, when the Mutiny Acts passed annually by Parliament provided a more speedy punishment by means of a military court (*e*).

Punishment of desertion after Revolution.

Second Period—Standing Army.

30. At the Restoration in 1660, considerable changes took place in the military system of the country. Knight service, with the feudal levy and its incidents, including Escuage, was finally abolished (*f*); the organisation of the general levy, of which the trained bands formed part, into the militia was completed under the authority of Parliament, and at the same time the king laid the foundation of the present standing army.

Changes in military system on the Restoration in 1660.

31. Before the Restoration there had been no standing army. Armies for particular wars had indeed been raised and paid for by Parliament, but were not kept on foot as standing armies after the conclusion of the wars for which they were raised, mainly, perhaps, on account of the cost (*g*). A few troops were also maintained in certain garrisons, and small corps of serjeants-at-arms (*h*), yeomen of the guard (*i*), and gentlemen pensioners (*j*) existed; but these

No standing army before Restoration.

(a) See Acts quoted above in note (*g*), to para. 34; and writ to arrayers of 17th June, 1327, in Rymer's *Fœdera*, directing the arrayers to punish the disobedient by arrest and seizure into the King's hands of their lands, tenements, goods, and chattels; Lingard, iv. ch. ii.

(b) Grose, *Mil. Antiq.*, i. 3, 8; Stubbs, *Const. Hist.*, ii. 294; Hallam, *Middle Ages*, i. 170; Scott, *Brit. Army*, i. 119, 122, 245; Cobbett, *Parl. Hist.*, ii. 549, 642.

(c) 18 Hen. VI, c. 19. Every felony at that time involved capital punishment and forfeiture of personal property.

(d) 7 Hen. VII, c. 1; 3 Hen. VIII, c. 5; see also 2 & 3 Edw. VI, c. 2, revived by 4 & 5 Phil. and Mar., c. 3, s. 8. The Acts also provided for the punishment of certain frauds, as regards pay, &c.

(e) The above mentioned Acts, 7 Hen. VII, c. 1; and 3 Hen. VIII, c. 5, were determined to be in force by the *Case of Soldiers*, Coke's Rep., Part vi, 27a, and were put in execution by James II, *Rez. v. Dale*, 2 Shower's Rep., 511; Howell's *State Trials*, xii. 262, note 7, but being in practice rendered useless by the Annual Mutiny Acts, were repealed as obsolete by the Statute Law Revision Act, 1863. Grose, *Mil. Antiq.*, i. 65, writing before that repeal, observes that if the Mutiny Act were at any time to expire, the soldier would be punishable for desertion in a civil court under the above-mentioned Acts. See also Hale, *Pleas of the Crown*, i. 670-80; Blackstone's *Commentaries*, iv. 102; Clode, *Mil. Forces*, i. 350. Macaulay, in his *History* (iii. 43), says that the Acts put in force by James II were obsolete, and that the construction put upon them by the judges was considered by respectable jurists as unsound. It appears, however, from the report of the case that the illegality, if any, was in regard to the place of execution of the soldier convicted, and not in the fact of his prosecution.

(f) By 12 Cha. II, c. 24.

(g) Grose, *Mil. Antiq.*, i. 61; Scott, *Brit. Army*, i. 328.

(h) Now a purely civil body; Grose, *Mil. Antiq.*, i. 61, 173-175.

(i) Established by Hen. VII in 1485; Hallam, *Const. Hist.*, ii. 131; Grose, *Mil. Antiq.*, i. 61, 175-177.

(j) Established in 1509 by Hen. VIII; Grose, *Mil. Antiq.*, i. 61 113-120.

Ob. IX. corps were kept up rather as personal attendants on the King than for operations in the field (*a*). The only other corps of a permanent character were the trained bands, and the Honourable Artillery Company of London, and similar associations, which were in effect either part of the general levy, or voluntary associations, and not in the nature of a standing army (*b*).

Maintenance of standing army after Restoration;

32. The army raised by the Parliament during the Civil War was disbanded under Acts of Parliament (*c*) passed on the Restoration in 1660, but under a section in those Acts Charles II was enabled to keep up not only the garrisons in certain fortified places, but also one or two of the regiments which had aided in his restoration (*d*). Moreover, he subsequently raised several other regiments by voluntary enlistment, and paid them out of the liberal grants made to him for life by Parliament. These regiments were maintained during his reign and that of his successor, James II, and their numbers were gradually increased, not merely on the occurrence or in anticipation of foreign war, but on other occasions (*e*).

Maintenance of standing army in time of peace, without consent of Parliament, declared illegal by Bill of Rights.

33. The maintenance of these troops, however, formed the subject of frequent remonstrances in Parliament (*f*), and the increase of their numbers by James II was one of the causes which led to the Revolution of 1688. At that time, while the opponents of the Court party during the previous reigns had just escaped from the evils and the dangers of a standing army, the Court party had not forgotten how keenly they had felt them during the Commonwealth. Both parties therefore joined in procuring the declaration in the Bill of Rights (*g*), "that the raising or keeping a standing army within the Kingdom in time of peace unless it be with the consent of Parliament is against law"; a declaration annually repeated, up to 1878 in the preamble to the Mutiny Act, and since then in the preamble to the Annual Act bringing the Army Act into force.

Control of Parliament since the Bill of Rights.

34. Notwithstanding the insular position of England, the course of events since 1689 (*h*) has at times been such as to make the nation acquiesce in the necessity for keeping up a standing army, and such a force has accordingly been maintained without intermission since the passing of the Bill of Rights. But the raising, government, and payment of the army have always been expressly sanctioned by Parliament, and only for a period of twelve months at a time, so that it is a statutory, and not a prerogative force, and the Crown is under the necessity of asking annually for the consent of Parliament to its maintenance.

(*a*) Grose, *Mil. Antiq.*, i. 61.

(*b*) Hallam, *Const. Hist.*, ii. 131-133.

(*c*) 12 Cha. II, cc. 9, 10, 15, 20, 27, 28.

(*d*) For instance, General Monk's regiment raised at Coldstream, afterwards the Coldstream Guards, which, together with other regiments, was disbanded and reformed on the same day. Grose, *Mil. Antiq.*, i. 61, 98; Mackinnon's *Hist. of Coldstream Guards*. The territorial titles of other regiments, as 10th North Lincoln, 15th York, East Riding, arose similarly, no doubt, from the districts in which they were first raised.

(*e*) As, for instance, when the garrison of Tangier was brought to England on the abandonment of that settlement. Grose, *Mil. Antiq.*, i. 61, 98; Macaulay, *Hist. of England*, i. 293, 294. See also Clode, *Mil. Forces*, i. ch. iv.

(*f*) Taswell Langmead, *Const. Hist.*, 497, 609; Clode, *Mil. Forces*, i. ch. iv.; 31 Cha. II, c. 1.

(*g*) 1 Will. & Mar., sess. 2, c. 2 (1689). It will be observed that this Act is a declaration of old law, not an enactment of new.

(*h*) First, the engagement of England in the continental league against Louis XIV, accompanied by the victories of Marlborough; then the dangers from the Scotch and other Jacobites; then the War of the Austrian Succession; the Seven Years War; the American War; the French Revolution; and the Peninsular War. Until the latter, the numbers were very small. see table, Clode, *Mil. Forces*, 398; Hallam, *Const. Hist.*, iii. 256-258; Taswell Langmead, *Const. Hist.*, 608.

35. The number of troops to be maintained is and has since 1712 been mentioned in the preamble to the annual Act which sanctions the army (a), and any unauthorised augmentation of such number has been always resisted by Parliament (b); indeed Parliamentary authority has been invoked to enable the Crown to accept the services of Volunteers (c). Any excess of forces above the number named in the preamble to the annual Act does not, however, affect the application to those forces of the Act enacting military law (d), though it would form a ground for censure or impeachment of the Minister who authorised the excess. The provision of the Bill of Rights prevents the introduction of foreign troops into the kingdom without the consent of Parliament (e).

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As respects number of troops.

2. RAISING, GOVERNMENT, AND PAYMENT OF ARMY SINCE 1660.

36. A short statement will now be given of the manner in which the army has been raised, governed, and paid from the time of the Restoration until the present day.

Raising, &c., of army since 1660.

37. The final abolition of impressment in 1640 has been already mentioned, and since the Restoration in 1660 compulsory service in the army in the usual sense of the term has been unknown in this country; but at different times Acts have been passed authorising the impressment of certain persons of blemished character, or unsettled mode of life (f). Still for the greater part of the period enlistment has been entirely voluntary, recruits having been induced to enlist by means of sums called bounties, paid to them on their enlistment, which in time of war rose to a considerable amount (g).

Compulsory service replaced by system of bounties.

38. During the wars of the greater part of the eighteenth century recruits were wanted for the militia as well as for the army, so that difficulties constantly arose in consequence of competition between the officers recruiting for the two forces. These difficulties were intensified by the use of the ballot for the purpose of raising the militia, inasmuch as parishes, in order to avoid the ballot by obtaining volunteers, and persons drawn in the ballot for service, in order to obtain substitutes, paid high prices to the very men who

Competition for recruits between army and militia in 18th century.

(a) Formerly the Annual Mutiny Act, and now the Army (Annual) Act. The first Act in which the numbers were mentioned was 12 Ann. c. 13, which regulated the number and discipline of the forces continued on foot after the conclusion of the peace of Utrecht.

(b) Clode, Mil. Forces, i. 85-89.

(c) See below, para. 110, *et seq.* See also s. 3 of the Reserve Forces and Militia Act, 1898.

(d) See Army (Annual) Act, s. 2 (3). The number of the Marines was not mentioned in the preamble to the Marine Mutiny Act, and is not mentioned in the Army (Annual) Act, possibly because they partly belong to the navy, whose numbers are not limited; see the text of the Army (Annual) Act, below, p. 367.

(e) Clode, Mil. Forces, i. 89.

(f) Provisions for the release from custody of criminals pardoned on condition of enlisting were contained in the Mutiny Act of 1702 (1 Ann. stat. 2, c. 20, s. 50), and repeated in subsequent Acts to 1711. The impressment of persons having no settled mode of living was allowed by Acts passed between 1703 and 1711 (2 & 3 Ann. c. 13, 3 & 4 Ann. c. 10, 4 & 5 Ann. c. 21, 6 Ann. cc. 17, 48, 7 Ann. c. 2, 10 Ann. c. 12, in the Record Edition of the Statutes), and again by Acts of 1744 (17 Geo. II, cc. 15, 26), 1745 (18 Geo. II, c. 10), 1756 (29 Geo. II, c. 4), 1757 (30 Geo. II, c. 8), 1778 (18 Geo. III, c. 53), and 1779 (19 Geo. III, c. 10). In 1758, the Court of King's Bench discharged a man improperly pressed under the Act of 1757, *Rez v. Kessel*, Burrow's Rep. i. 637; and Grose, Mil. Antiq., i. 98, note (t) records the bad results of the Act of 1779. Provisions were made for the release of insolvent debtors from custody on condition of enlisting or finding persons to serve in their places in 1696 (7 & 8 Will. III, c. 12, s. 14), 1702 (1 Ann. c. 19), and 1703 (2 and 3 Ann. c. 10). See also 1 Geo. III, c. 17, s. 57. See Clode, Mil. Forces, ii. 8-19, 48-55, 587; Reports on Recruiting, Parliamentary Papers, 1861, Vol. xv.; and 1867, Vol. xv.; Appendix by Mr. Clode.

(g) For the history of enlistment since 1660, see Clode, Mil. Forces, ii. ch. xv. and the Parliamentary Papers mentioned in note (f) *supra*.

Ch. IX. — would otherwise have enlisted in the army. From 1802 down to 1908 (when, as described below, the militia ceased to be raised in the United Kingdom and its units were transferred to the Special Reserve) the policy was to encourage enlistment from the militia into the army; since 1908 the same course has been pursued in the case of the Special Reserve (*a*).

Contracts to raise troops subsequently to the Revolution in 1688.

System of recruiting by beating orders.

Mode of defraying expenses of recruiting.

Pecuniary interest of officers in system.

Abolition of system, 1783.

39. In time of war, since the Revolution in 1688, the old system of contract has upon occasion been reverted to, and troops have been raised by an agreement between the Crown and some nobleman or gentleman, who has undertaken to raise a corps on condition of receiving the nomination of all or some of the officers (*b*).

40. Even in time of peace, the mode of raising troops down to 1783 was by a species of contract between the Crown and the colonel, who received from the Crown a beating order, enabling him to raise recruits, and was held responsible for enlisting sufficient recruits to raise and keep up the regiment to its proper numbers. The sums for recruiting expenses and for pay and clothing were issued to him in gross; and, subject to certain limitations as to the amount of bounties, he and his officers made their own bargains with the recruits (*c*).

41. The sums for recruiting expenses in each regiment were carried to a fund called the stock purse, the accounts of which were made up annually, and the surplus (if any) was handed to the captains of the companies. The commission to a major or colonel appointed him also to be a captain of the regiment, so that he had a company of which he shared the profits, while it was commanded by a captain-lieutenant. The balances, however, were seldom large; and when vacancies became numerous from losses on service or other causes the cost of recruiting exceeded the allowance, and the officers were liable to heavy expenses, from which they were not unfrequently relieved by extra allowances. One survival of this system was the extra allowance made to the senior colonel and senior major (*d*).

42. Under the above system the officers had a pecuniary interest in keeping down the expenses of recruiting, both by obtaining men cheaply, and by prolonging the service of men enlisted, and so avoiding the necessity of obtaining recruits in their places. Fraudulent re-enlistment defrauded the captain, and as early as 1689 this offence was by the Mutiny Act made punishable with death (*e*). At the same time the system held out great temptations to frauds in mustering and drawing pay for non-effective men as effective, which, though restrained by provisions of the Mutiny Act, continued to prevail until the pecuniary interest of officers in the pay of the men ceased (*f*).

43. The above system was abolished in 1783 (*g*), and recruiting has ceased to be a matter of pecuniary interest to the officer, and is carried on by recruiting officers acting under the Director of Recruiting and Organisation in accordance with orders of the

(*a*) The various difficulties which arose, and the expedients resorted to to remove them, are detailed in Clode, *Mil. Forces*, i. ch. xiv. See the Parliamentary Papers mentioned in note (*f*), on para. 37.

(*b*) This system was known as that of "raising men for rank," see Clode, *Mil. Forces*, ii. 5. This system was last resorted to in 1854, in the Crimean war.

(*c*) Clode, *Mil. Forces*, i. 74, 105, ii. 2-6.

(*d*) Clode, *Mil. Forces*, ii. chap. xv., and Appendix, note (WW), p. 568.

(*e*) 1 Will. & Mar., sess. 2, c. 4, s. 1; Clode, *Mil. Forces*, ii. 3.

(*f*) Clode, *Mil. Forces*, ii. 8-10.

(*g*) By 23 Geo. III, c. 50, known as "Burke's Act."

Secretary of State (*a*), and the expenses are paid directly by the Crown. Of late years the payment of bounties has been discontinued, but the power to issue them in times of emergency is retained. Ordinarily, a small pecuniary reward is given to recruiters and recruiting agents for each recruit raised and approved. Ch. IX.

44. The term of service, after it ceased on the introduction of the standing army to be for a particular war only, has varied continually. As a general rule, until the year 1847, the term of service of men enlisted in time of peace was for life; but whenever the exigencies of war required additional troops, recourse was had to enlistment for a limited term of years (*b*). Term of service.

45. In 1847 was passed the Army Service Act, which, as amended in 1849, limited first engagements to ten years for the infantry and twelve for the cavalry or artillery, but allowed re-engagements for such further periods as would make up a total service of 21 or 24 years, as the case might be; and a soldier, with the approval of the military authorities, might continue his service after the 21 or 24 years, until he gave three months' notice of his wish to be discharged (*c*). During the Crimean War (1855) and Indian Mutiny (1858) power was given temporarily to the Crown to enlist and re-engage for shorter periods, and also to re-engage men in the cavalry and artillery for a period making up 24 years' service (*d*). Army Service Act, 1847.

46. By the Army Enlistment Act, 1867 (*e*), first engagements were to be for 12 years in the infantry as well as in the cavalry and artillery, with power to re-engage for such a period as would make up 21 years' service, whether in the infantry, the cavalry, or the artillery, and the provision as to a soldier continuing in the service after 21 years, until he gave three months' notice of his wish to be discharged, was re-enacted. Army Enlistment Act, 1867.

47. These provisions continued until the Army Enlistment Act, 1870 (*f*), when the system known as the short service system was introduced for the purpose of securing a body of reserves. Army Enlistment Act, 1870, and Reserves.

The Army Reserve had been established in 1867 to consist of men enlisted from soldiers serving, or having served, in the army, and to be a separate body with their own officers. The Act of 1870 practically altered its character, and the Reserve Forces Act, 1882, has made corresponding alterations in the law.

The Militia Reserve was also established in 1867, and was, with minor differences, the same as that which may be raised under the present Acts (*g*). It has not, however, been raised in practice since 1901.

(*a*) Clode, Mil. Forces, ii. 10, 20, 55. The Enlistment Act, 1870, 33 & 34 Vict. c. 67, conferred statutory power on the Secretary of State to issue orders. This is re-enacted in A.A. 93.

(*b*) Under several Acts in the time of Anne and Geo. II, and also under the Acts for impressment before referred to, the term of service was for a limited term of years. After 1829 men were enlisted for life only, and this continued until 1847.

(*c*) 10 & 11 Vict. c. 37; 12 & 13 Vict. c. 73. The power of cavalry and artillery to re-engage for 12 years, making a total of 24, was repealed by the Act of 1849. Section 1 of the first Act limited the first engagement to a maximum of 10 and 12 years respectively, but the words in the schedules as to the mode of filling up the attestation paper were construed to prevent an enlistment for any shorter period than the above terms. See the preamble to 18 & 19 Vict. c. 4.

(*d*) 18 & 19 Vict. c. 4; continued by 21 & 22 Vict. c. 55.

(*e*) 30 & 31 Vict. c. 34.

(*f*) 33 & 34 Vict. c. 67. The Act is now repealed for the most part; the provisions re-enacted in the Army Act are stated in Ch. X.

(*g*) Reserve Forces Act, 1867, 30 & 31 Vict. c. 110; Militia Reserve Act, 1867, 30 & 31 Vict. c. 111, amended by 33 & 34 Vict. c. 67; 34 & 35 Vict. c. 86; Mutiny Act, 1878, s. 107; 42 & 43 Vict. c. 32, s. 5.

- Oh. IX.** 48. The government of the Army since 1660 is dealt with in Chapter II; it may, however, be observed here that when the army became a constitutional army, that is, dependent on the consent of Parliament for its maintenance, the obligation to serve was allowed to be enforced by courts-martial with military procedure, and not merely as before, by the civil courts. The power to govern the army, as mentioned above, is annually given by Parliament; but when given is exercised, as in the navy and civil service, by the Crown alone. The manner in which that power is exercised is constitutionally subject, like the exercise of other prerogatives, to the advice of the ministers of the Crown, of whom the one particularly responsible for the army is the Secretary of State for War.
- Government of Army since 1660.**
- Finance of the army.** 49. With respect to the payment of the army, the annual sanction of the army by Parliament removes the old difficulties, as Parliament grants the money for its maintenance. But the existence of a standing army rendered necessary a permanent machinery for administering that money. The history and nature of that machinery is hardly within the scope of the present work, and therefore a brief statement only can be made (*a*).
- Grant of money by Parliament.** 50. In the case of the army, as in that of the civil departments of Government, Parliament grants the necessary money on estimates submitted by the Crown, and the money granted is expended by the Crown, subject to control and audit on the part of Parliament (*b*).
- Issue of pay.** 51. The pay of the soldiers of each regiment was formerly issued to the colonel by the Paymaster-General (a civil officer, and often a member of Parliament), and his subordinates, who were civilians. It is now practically issued by the Paymaster-General and disbursed through the captains of companies, each of whom keeps an account with the men of his company.
- Clothing.** 52. The clothing of each regiment used to be supplied by the colonel, according to a pattern selected by a clothing board, and was paid for by him out of his allowance for "off-reckonings"; but since 1854 the clothing has been supplied direct by the clothing department.
- Military stores.** 53. The money granted for military stores was formerly expended by the civil part of the Board of Ordnance, a department which dates back before the Restoration, and of which the chief was the Master-General of the Ordnance, often a Cabinet Minister.
- Barracks.** 54. The money granted for barracks, after being for a time expended under a special barrack department, which was at first of a purely military character, and afterwards partly civil, was eventually transferred to the Board of Ordnance.
- Provisions and transport.** 55. The money granted for provisions and transport was expended through the Commissariat, who were civilians and officials of the Commissioners of the Treasury. From 1704 to 1836 there were other civil officers, called Controllors of Army Accounts, whose duty it was to examine and check army accounts and contracts, and to report to the Treasury on frauds and abuses. One of them was sometimes present with the army. Their office was in 1836 merged in the Board of Audit.
- Army extra-ordinaries.** 56. For many years, besides the expenditure of the sums which were voted by Parliament upon estimates, there were expended large sums known as "army extraordinaries," which

(*a*) For a fuller account, see Clode, *Mil. Forces*, chs. vi, vii, xxi, xxiii, on which the following summary is founded.

(*b*) For early instances of this control, see *Forster's Life of Sir J. Elliot*, i. 158.

began with extraordinary expenses which could not be foreseen when the estimates were submitted to Parliament; but the system became an abuse, and was ultimately abolished in 1836. While it existed, the money was expended at first entirely by military officers, but during the present century partly by military officers and partly through the Commissariat or other civil officers.

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57. The office of Secretary at War dates from the reign of Charles II and began as that of a private secretary to the Sovereign in military matters. This officer afterwards usually held a seat in Parliament as one of the Ministry. His position and duties were vague, but he undoubtedly was a civil officer, and had, especially after 1783 (Burke's Act), great control over the financial and other civil administration of the army; after 1783 he was responsible for the estimates of military expenditure submitted to Parliament; but he had no direct control over the artillery or engineers, or over the *matériel* of the Force. He was, however, subordinate to the Cabinet, and especially to the third Secretary of State, when that office was created (a). The duties of the office of Secretary at War were taken over by the Secretary of State in 1855, and the office was abolished in 1863 (b).

Secretary at War.

58. By the side of the civilian officers above-mentioned there was the purely military administration, which remained under the direction of the Sovereign as Commander-in-Chief, assisted by a board of General officers, till the establishment of the office of the General Commanding-in-Chief in 1793 (c). The administration of military law was, however, checked by the Judge Advocate-General, a Privy Councillor, and usually a member of Parliament and one of the ministers of the day, who advised the Sovereign on the legality of the proceedings of courts-martial (d). The office of Judge Advocate-General, having ceased to be paid, was, in 1892, made non-political, and was, from that date down to 1905, held by the President of the Probate, Divorce, and Admiralty Division. In that year, on a new appointment being made to the office, the position of the Judge Advocate-General was considerably altered. He is now a permanent official under the orders of, and acting as legal adviser to, the Secretary of State; he is no longer a Privy Councillor, nor does he advise the Crown directly.

Commander-in-Chief and Judge Advocate-General.

The office of Commander-in-Chief ceased to exist in the early part of 1904, and the Patent creating the Army Council (February, 1904) (e), transferred to that body among other powers the powers theretofore exercised by the Commander-in-Chief under the Royal Prerogative.

59. At the end of the eighteenth century, a third Secretaryship of State (f) was created, the holder of which was to have a

Secretary of State for War.

(a) See para. 59 below, and Clode, *Mil. Forces*, chaps. iv., xxi.

(b) 26 & 27 Vict., c. 12.

(c) See Clode, *Mil. Forces*, chap. xxvi. The Sovereign is Commander-in-Chief, unless the office is granted away. The Duke of Marlborough, in Queen Anne's reign, was appointed Commander-in-Chief, and commissioned officers by his own authority. The Duke of Cambridge was appointed Commander-in-Chief in 1867, but had no power under the Patent to issue commissions; and neither Lord Wolsley, who succeeded the Duke of Cambridge as Commander-in-Chief in 1895, nor Lord Roberts, who succeeded to the office in 1901, had power to issue commissions. In India there is a Commander-in-Chief, but without power to commission officers, except temporarily, until the King's pleasure is taken.

(d) Clode, *Mil. Forces*, chap. xxvii.

(e) See para. 59A below.

(f) All the Secretaries of State have equal powers, so that, though in practice different Secretaries of State administer different departments, technically there is no distinction between them. A third Secretary of State had been created in 1768, but the office was abolished in 1782 by 22 Geo. III, c. 82. It was, however, revived in 1794; Sir Erskine May, *Const. Hist.*, iii. 360; Clode, *Mil. Forces*, ii. 320.

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general superintendence of the army and the colonies. During the peace after 1815, when the army was less important, and the colonies grew more important, the colonial part of the work absorbed most of the Secretary of State's attention. The outbreak of the Crimean War again called greater attention to the army, and in 1854 a new Secretary of State was created, and shortly afterwards the whole civil administration of the army was placed in his hands. The powers and duties of the Board of Ordnance and of the Secretary at War were transferred to him, and the commissariat officials, and also the Paymaster-General, so far as concerned the army, were also placed under his orders (*a*). In 1858 the commissariat officials were made military officers, subject to the direction of the General commanding the force to which they were attached. But whether the officials engaged in the administration and discipline of the army are civil or military, the Secretary of State for War, a member of one of the Houses of Parliament and a Cabinet Minister, is responsible for the acts of all of them, and is the constitutional and responsible adviser of the Crown in all questions connected with the army. The ultimate responsibility of the Secretary of State was in no way affected by the reorganisation of the War Office and creation of the Army Council in 1904.

In 1870 the transfer of the officers who exercised the military administrative functions from the Horse Guards to the War Office brought every branch of army administration under the direct and immediate control of the Secretary of State. The actual army administration was divided between the officer Commanding-in-Chief, the Surveyor-General of Ordnance, and the Financial Secretary. In 1888 (*b*) the Commander-in-Chief became solely responsible to the Secretary of State not only for the efficiency of the men but also of the *matériel*, the responsibility for all accounts, contracts, and manufactures remaining with the Financial Secretary. This concentration of military responsibility in the Commander-in-Chief was abolished in 1895 (*c*) and divided between (1) the Commander-in-Chief, who retained the responsibility for general command over the military forces at home and abroad, and the general supervision of the military departments of the War Office; (2) the Adjutant-General, who was responsible for the discipline and training of the troops, and for recruiting and discharging; (3) the Quartermaster-General, who had direct charge of the food, forage, quarters, fuel, and transport of the army, and of the pay department; (4) the Inspector-General of Fortifications, who had charge of barracks, fortifications, &c., and of the engineer services; and (5) the Director-General of Ordnance, who issued demands for, inspected, and had custody of warlike stores and equipment, dealt with patterns and inventions, and administered the Army Ordnance Department and Corps. Each of these five officers was directly responsible for his department to the Secretary of State.

A further change was made in 1901 (*d*), when the Military Department was divided into four, instead of five, departments, the

(*a*) See 18 & 19 Vict. cc. 10, 11; 26 & 27 Vict. c. 12.

(*b*) Orders in Council of 29th December, 1887, and 21st February, 1888.

(*c*) Order in Council of 21st November, 1895. An Order in Council of the 7th March, 1899, superseded the Order of 1895, but substantially reproduced its provisions, except that the direction of Army Factories was transferred to the Ordnance Branch, subject to the financial control of the Financial Secretary.

(*d*) Order in Council of 4th November, 1901.

Adjutant-General being made subordinate to the Commander-in-Chief, while the Inspector-General of Fortifications, the Quartermaster-General, and the Director-General of Ordnance remained in the same position as under the Order of 1899.

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59A. The question of the organisation of the Army and the War Office again came to the front on the conclusion of the war in South Africa, and in 1904 (following the lines of the report of the War Office (Reconstitution) Committee (a)) the administration of the Army was placed in the hands of an Army Council, created by Letters Patent of the 6th February, 1904. These Letters Patent vested in that Council all the prerogative powers of the Crown in relation to the Army which had theretofore been exercised by the Secretary of State, the Commander-in-Chief, and other principal officials, and by the Army (Annual) Act of 1909 there were transferred to the Army Council all the powers of the Commander-in-Chief and the Adjutant-General under the Army Act, and various other statutory duties set out in detail in the second schedule to the Act of 1909.

Army Council.

The Council consists of seven members, viz.: the Secretary of State, four Military Members (the Chief of the Imperial General Staff, the Adjutant-General, the Quartermaster-General, and the Master-General of Ordnance), a Finance member and a Civil member.

The Secretary of State remains responsible to the Crown and Parliament for all the business of the Council, while under him the business is divided up as follows:—The military members are responsible for the administration of so much of the business relating to Army organisation, disposition, personnel, armament and maintenance as is assigned to them or any one of them by the Secretary of State; the Finance member is charged with Army finance, and the Civil member is responsible for the non-effective votes. The Secretary of State may assign any other business either to the Finance member or the Civil member. The Finance Member is assisted by an assistant financial secretary who allows and pays all moneys for Army services, audits all cash expenditure, and prepares the accounts of that expenditure for Parliament (b).

In addition to the above officials, there is an Inspector-General of the Home Forces, and an Inspector-General of the Overseas Forces, who act under the orders of the Army Council, to whom they are charged with reporting as to the training and efficiency of the troops, the readiness and fitness of the Army for war, and generally on the practical results of the policy of the Council.

60. The audit of military accounts has remained independent of the Secretary of State, and is now conducted on behalf of the House of Commons by the Audit Department under the Comptroller-General of the Receipt and Issue of His Majesty's Exchequer and the Auditor-General of the Public Accounts, commonly called the Comptroller and Auditor-General.

Audit of military accounts.

3. MILITIA.

General Sketch of History.

60A. The portions of this chapter relating to the militia, yeomanry and volunteers must be read whilst bearing in mind the changes in army organization made in 1907 and 1908, as briefly summarized hereafter. Although since the latter year these forces

Preliminary remarks.

(a) Parliamentary Papers, 1904. Cd. 1938.
(b) Orders in Council of 10th August, 1904.

Ch. IX. have not been raised in the United Kingdom the Acts relating to them remain in force, and there is power to raise them if necessary. As, however, at the time this chapter was originally written and on the occasion of all previous new editions the militia, yeomanry, and volunteers were actually raised, the ensuing paragraphs will be found to contain expressions which, unless these changes are borne in mind, may be misleading.

Periods of
history of
militia.

61. The history of the militia, since the Restoration in 1660, divides itself into four periods: (1) from 1660 to 1757, (2) from 1757 to 1815, (3) from 1815 to 1852, during which the militia was practically in abeyance, and (4) from 1852 to 1908 during which the volunteer militia existed.

General and
local
militia.

62. The militia, as it existed in 1907, was the general or regular militia, as distinguished from the local militia which was established at the beginning of the last century, and which, though in abeyance, might still legally be raised. At the beginning of the nineteenth century also several Acts were passed relating to forces other than the regulars and militia, which will require notice (a).

First period.
Organisa-
tion of
militia on
Restoration
in 1660.

63. Although the feudal levy was abolished in 1660, the liability to serve in the general levy has never been extinguished (b), and remains not only in constitutional theory, but also in the statutory and practical form of liability to serve both in the general and the local militia.

The command of the trained bands, or militia, and the disposal of their arms, and the appointment and removal of the lieutenants of counties had, as before mentioned, formed one of the principal subjects of dispute between Charles I and the Long Parliament, in the course of which the name "militia" came into general use (c). On the Restoration, therefore, it was necessary that these questions should be dealt with; and a Bill for settling the militia was introduced into the Commons in the Parliament by which Charles II was recalled, but met with great opposition, "because there was martial law provided in it" (d). Consequently, though the feudal levy was abolished, Parliament was dissolved before any militia Bill could be passed. In the next Parliament the question was at once taken into consideration, and an Act was passed (e) to legalise for a year the training of "the militia and land forces" under the lieutenants of counties, to whom Charles II had in the meanwhile issued commissions.

Acts passed
1662-1745.

64. In the following year (1662) an Act was passed "for ordering the forces in the several counties in the kingdom"; and by this Act, as amended by an Act passed in 1663, the militia was at length organised, and the trained bands, except in the City of London, were ordered to be discontinued (f). Further

(a) As to these Acts and the local militia, see para. 101, *et seq.*

(b) The Act 4 & 5 Phil. & Mar. c. 3 (for musters) was not repealed until 1863, when it was repealed as obsolete by the Statute Law Revision Act (26 & 27 Vict. c. 125), with wide saving as to its effect.

(c) See above, para. 22. "Militia" seems to have been used as early as 1590; see Scott, Brit. Army, i. 448 (note), Bacon's Essays, and Raikes' Hist. of the Hon. Artill. Comp., i. 106, 110, and it is constantly used in the reports of the proceedings in Parliament in 1640 and 1641; Cobbett, Parly. Hist., ii.; though Whitelocke, in 1641, speaks of it as "this new word, this hard word"; *ibid.*, ii. 1078; Rushworth, Historical Collections iii. pt. 1. 525; Clode, Mil. Forces, i. 31 (note).

(d) Commons Journals; Cobbett, Parly. Hist., iv. 145.

(e) 13 Cha. II, stat. 1, c. 6. The preamble refers to the pending Bill for the militia. (f) 14 Cha. II, c. 3; 15 Cha. II, c. 4. As to the discontinuance of the trained bands in fact, see Clode, Mil. Forces, i. 86. The old power to enlist and levy the trained bands in the City of London continued unaltered (being saved by the various Militia Acts) until 1794, when an Act was passed (34 Geo. III, c. 81), for the organisation of a militia force in the City. This Act (as amended by 35 Geo. III, c. 27), was subsequently repealed by 36 Geo. III, c. 92; and that Act, as amended by 39 Geo. III, c. 82 (see also 42 Geo. III, c. 90, s. 153) was in its turn repealed by 1 Geo. IV, c. 100, which still remains in force. As to the use of the term "trained bands" in the above Acts, see Raikes' Hist. of the Hon. Artillery Company, ii. 146.

provision was made for the new force by Acts of the subsequent reigns (a), and it was called out in 1690 on the occasion of the French invasion, and again during the rebellions of 1715 and 1745 (b).

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65. The rebellion of 1745 brought into notice the general inefficiency of the force; and in 1756 attention was called by a panic as to a French invasion, and by the introduction of Hanoverian troops, for which the apprehended invasion had been made an excuse, to the necessity of strengthening the national defensive forces. Accordingly, in 1757 (rather against the will of the Ministers, and only for a period of five years) an Act was passed by which the force was re-organised on nearly the same basis as that on which the balloted militia now rests (c). Opposition arose in several counties to the execution of this Act, and difficulty was experienced in obtaining officers (d); and several Acts were subsequently passed for the purpose of enforcing the execution of the law. Progress was, however, made, and the force was embodied in the year 1759 (e).

Second period. Reorganisation of militia after rebellion of 1745.

66. The Acts relating to the Militia were consolidated in 1781 (f), and again in 1786, when the greater number of the regiments had been raised (g), and the utility of the force was emphatically recognised by Parliament in the preamble to the consolidating Act (h). The Acts were again consolidated in 1802, after the peace of Amiens, by 42 Geo. III, c. 90, which Act, as subsequently amended (i), is still in force as regards the ballot. Between 1802 and the peace in 1815, numerous additional Acts were passed with respect to the militia, some of which were of a permanent character, but the greater number were temporary measures, and had reference

Consolidation of Militia Acts.

(a) 7 & 8 Will. III, c. 16, which, after being re-enacted by 9 Will. III, c. 31, 11 Will. III, c. 14, 12 Will. III, c. 8, was made perpetual; 1 Ann. stat. 2, c. 15, 4 & 5 Ann. c. 10, 6 Ann. c. 28, 10 Ann. c. 33, 1 Geo. I, stat. 2, c. 14, 9 Geo. I, c. 8, 19 Geo. II, c. 2.

(b) See preamble to 2 Will. & Mar. sess. 2, c. 12, and 7 Geo. II, c. 23. Lord Mahon, *Hist. of England*, iii. 398-422.

(c) 30 Geo. II, c. 25, amended by 31 Geo. II, c. 26, 32 Geo. II, c. 20, 33 Geo. II, cc. 22, 24. See Clode, *Mil. Forces*, i. 39-42; Cobbett, *Parly. Hist.*, xv. 782; Lord Mahon, *Hist. of England*, iv. 133.

(d) Clode, *Mil. Forces*, i. 39; Lord Mahon, *Hist. of England*, iv. 134.

(e) Clode, *Mil. Forces*, i. 40.

(f) By 2 Geo. III, c. 20, which was at first enacted for seven years only, but was made perpetual by 9 Geo. III, c. 42. It was amended by 4 Geo. III, c. 17; 5 Geo. III, cc. 34, 36; 6 Geo. III, c. 30; 7 Geo. III, cc. 15, 17; 9 Geo. III, c. 42; 11 Geo. III, c. 32; 16 Geo. III, c. 3; 18 Geo. III, cc. 14, 59; 19 Geo. III, cc. 72, 76; 20 Geo. III, cc. 5, 44; 21 Geo. III, cc. 7, 18; 22 Geo. III, cc. 6, 62; 24 Geo. III, sess. 1, c. 13.

(g) In the circular of 30th April, 1833 (printed in Clode's *Militia Act*, 1875), the regiments are described as having been raised as follows: 47 before the peace of 1763, 22 between the peace of 1766 and the peace of 1783, and 21 for the revolutionary war. This circular announced their precedence as settled by lot.

(h) See Clode, *Mil. Forces*, i. 43. The Act of 1786 (26 Geo. III, c. 107) was amended by 23 Geo. III, c. 8; 24 Geo. III, cc. 18, 47; 26 Geo. III, c. 83; 28 Geo. III, c. 55; 29 Geo. III, cc. 90, 106; 39 & 40 Geo. III, c. 1; 42 Geo. III, c. 12. In addition to these Acts, several Acts were passed relating to the supplementary militia, i.e., an addition to the militia above the quota, and also Acts relating to the militia of particular localities which had separate militia corps, namely—

(1) The City of London, 34 Geo. III, c. 81, and 35 Geo. III, c. 27, which were consolidated by 36 Geo. III, c. 92, and that Act as amended by 39 Geo. III, c. 82, was saved in 1802 by 42 Geo. III, c. 90, s. 153, but was repealed in 1820 by 1 Geo. IV, c. 100, which is still partly in force. See *Militia Act*, 1882, s. 49.

(2) The Militia in the Stannaries known as the "Regiment of Miners," 28 Geo. III, c. 74, and 42 Geo. III, c. 72, the latter of which recites that a great length of time had elapsed since any commission had issued to the Warden of the Stannaries to array, arm, and exercise the miners. This Act is still partly in force. See *Militia Act*, 1882, s. 49.

The separate Militia of the Tower Hamlets (37 Geo. III, cc. 25, 75) was merged in the Militia of the County of London by the Local Government Act, 1888, s. 91.

(i) See especially 43 Geo. III, c. 50; 51 Geo. III, c. 118; 15 & 16 Vict. c. 50; 23 & 24 Vict. c. 120.

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either to the relations between the militia and the other forces then raised under certain special Acts, or to enlisting men for the militia by beat of drum, or to enlistment from the militia into the army (a). Except in the years 1830 and 1831 (b), a ballot for the militia does not seem ever to have been actually held since 1810 (c). A motion in Parliament in 1813 to suspend the ballot was defeated, and in 1814, on a motion in relation to the disembodiment of the militia, reference was made to the hardship of keeping balloted men away from their families (d).

Third
period.
1816-1852.

67. After the peace of 1815 the militia was allowed practically to fall into abeyance, although the permanent staff were maintained. The first step was to allow the annual training to be suspended by Order in Council (e). Then, from 1829 to 1866, an Act was passed annually suspending all proceedings for raising the militia by ballot, unless ordered by Order in Council, and the Act of that year has since been annually continued by the Expiring Laws Continuance Act (f).

Fourth
period.
Re-organ-
isation of the
militia in
1862.

68. In 1848 some excitement was felt with respect to the military position of the country in consequence of the great increase of armaments on the Continent, particularly in France. The subject was mentioned in Parliament, and the Prime Minister (Lord John Russell), in making his financial statement in 1848, expressed his intention of introducing a Bill for re-establishing the militia. Nothing, however, was done until 1852, when he proposed to reorganise the local militia, but this proposal was rejected by the House of Commons, in favour of an amendment (proposed by Lord Palmerston) to reorganise the regular militia. This vote led to a change of Ministry, and the next Ministry, of Lord Derby, introduced a Bill for reorganising the regular militia, which was ultimately passed into law (g), and thereafter the militia was, down to 1908, raised by voluntary enlistment. The militia law was amended from time to time between 1852 and 1875 by Acts, some portions of which applied to the volunteer militia, and others only to the force when raised by ballot (h).

Militia Act,
1876.

69. In 1875 the enactments which related to the volunteer militia, and also those which related to the organisation, command, government, and service of the force, whether raised by ballot or by voluntary enlistment, were consolidated by the Militia

(a) See 43 Geo. III, c. 10, c. 19, c. 47, c. 50, c. 100; 44 Geo. III, c. 54, s. 16, c. 56; 45 Geo. III, c. 31; 46 Geo. III, c. 91, c. 140; 47 Geo. III, sess. 2, c. 17, c. 71; 49 Geo. III, c. 4, c. 53; 50 Geo. III, cc. 24, 25; 51 Geo. III, c. 17, c. 20, c. 118, c. 128; 53 Geo. III, c. 81; 54 Geo. III, c. 11; 55 Geo. III, c. 65, c. 168. As to these Acts, their reasons and effect, see Clode, *Mil. Forces*, i. 287. Besides the above, there were Acts relating to Scotland and Ireland.

(b) See note (f) below.

(c) See Mr. Clode's evidence and App. XVII to report of Mr. Stanley's Militia Committee, 1876 (Parl. Paper, 1877, C.—1654).

(d) Clode, *Mil. Forces*, i. 280-299; *Annual Register*, 1813, p. 207.

(e) First, by a temporary Act, in 1816 (56 Geo. III, c. 64), and in 1817 by a permanent Act (57 Geo. III, c. 57), under which orders for suspension were made in almost every year.

(f) 10 Geo. IV, c. 10. Orders in Council directing a ballot were made and put in force in 1830 and 1831 (Clode, *Mil. Forces*, i. 47; *Parly. Papers*, 1834, vol. 42, 108; *Life and Struggles of William Lovett*, p. 65; *Hansard* (1832), x. 376). The Act of 1865 is 28 & 29 Vict. c. 46. The number of the permanent staff was reduced by the Act of 1829, and again in 1835 by 5 & 6 Will. IV, c. 37, which also provided for the militia stores of a county being transferred to the Ordnance Department.

(g) 15 & 16 Vict. c. 50. See *Hansard's Parly. Debates* for the years 1848 and 1852; Clode, *Mil. Forces*, i. 46, 305-307.

(h) See 16 & 17 Vict. cc. 116, 133 (England); 17 & 18 Vict. c. 13, c. 105 (England); c. 106 (Scotland); c. 107 (Ireland); 18 & 19 Vict. c. 19 (Ireland); c. 100; 22 & 23 Vict. c. 38; 23 & 24 Vict. c. 94; c. 120 (England); 32 & 33 Vict. c. 13; 33 & 34 Vict. c. 68; 34 & 35 Vict. c. 86; 36 & 37 Vict. c. 66.

Voluntary Enlistment Act, 1875 (38 & 39 Vict. c. 69), which was subsequently replaced by the Militia Act, 1882 (45 & 46 Vict. c. 49). Both of these Acts left unrepealed those enactments which related solely to the raising of men by ballot.

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Raising of the Militia.

70. The Act of 1662 followed the old law by requiring owners of property to furnish horses, horsemen, foot soldiers, and arms as specified in the Act, in proportion to the value of their property; and the liability of persons of small property was to be discharged out of a rate levied in the parish for foot soldiers and arms. The Act, though not expressly recognising volunteers, enacted that a person liable should not be obliged to serve in person, but might provide an approved substitute.

Raising of the militia. Act of 1662.

71. In 1757 the mode of raising the men was entirely changed, a liability on the part of the county and parish to provide men being substituted for a liability on the part of individuals. A certain number of men specified in the Act (usually known as the quota) were to be raised in each county, subject to certain powers of re-adjustment by the Privy Council. Lists of all men between the ages of eighteen and fifty in every parish in each county (except those expressly exempted) were to be sent to the lord lieutenant and the deputy-lieutenants, who were to hold meetings, and apportion the quota of the county among the different sub-divisions, and again sub-divide the quota of each sub-division among the parishes in proportion to their population, and then choose men by lot from each parish list up to the number apportioned to that parish. Every man so chosen had to serve for three years, or to provide a substitute, and vacancies were to be filled from time to time by a like process of ballot, which was to be repeated every three years. The above is practically the existing ballot system, although it has been frequently modified in details. Thus, the age of men liable to serve has been altered from time to time, and is at present, under the Act of 1860 (a), fixed between 18 and 30. Exemptions also have been added; as, for instance, the exemption of a poor man with more than one child (b). On the other hand, the term of service was extended from three years to five.

Alteration in mode of raising men in 1757.

72. In 1761 the raising of the militia was made compulsory by the imposition on counties of an annual fine for not raising the quota (c). This fine was at first 5*l.* for each man deficient, at one period it was as high as 60*l.*, and is now 10*l.* per man.

Fine for not raising quota.

73. Besides the substitutes allowed ever since 1662, the Act of 1758 enabled a parish to offer volunteers, and if they were accepted, to escape to that extent the liability to a ballot. If a volunteer so accepted failed to appear and be sworn and enrolled, the parish was bound to find another, or to pay out of the rates a

Volunteers recognised by Act of 1758.

(a) 23 & 24 Vict. c. 120.

(b) 42 Geo. III. c. 90, s. 43. At first Protestants alone were capable of serving; this restriction was abolished in 1797 for the supplementary militia (37 Geo. III. c. 22); and in 1802 for the regular militia.

(c) 2 Geo. III. c. 20, and amending Acts. This was re-enacted in 1769 (9 Geo. III. c. 42, which Act states that militia had not been raised in some counties), and again on the consolidation of 1788 (28 Geo. III. c. 107, s. 114, &c.), and at the beginning of the nineteenth century, 42 Geo. III. c. 90, s. 158; c. 91, s. 150 (as to Scotland).

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fine of 10*l*. (a). The Act of 1758 further empowered captains, on the embodiment of the militia, to augment their companies by volunteers, and this and the amending Acts enabled lord lieutenants of counties to accept, first, single volunteers, and then whole companies of volunteers with their officers (b). At the end of the 18th century these volunteers developed into a separate force under separate Acts.

Changes in
system
during
nineteenth
century.

74. In 1810, the enlistment in the militia of volunteers by beat of drum as supernumeraries, to a number exceeding the regular quota, was authorised, and the ballot was only to be resorted to in case of a deficiency (c). The militia was thus a force raised by ballot with the subsidiary aid of voluntary enlistment. In 1852, however, the system was changed, and the militia became a force of voluntarily enlisted men, with the ballot in reserve, as the Act of that year empowered the Crown in England to resort to the ballot, in case the quota in any county was not raised by voluntary enlistment, and also in case of invasion or imminent danger. In 1854 Acts were passed which provided for the raising of militiamen both in Scotland and Ireland by voluntary enlistment (d).

The militia when last raised consisted entirely of men voluntarily enlisted under the directions of the Secretary of State for War, and the suspension of the enactments as to the ballot is annually continued (see para. 67).

Numbers of
the militia.

75. In 1662, the number of men to be raised was not limited except so far as it depended on the wealth and number of the persons liable to furnish or contribute to furnish men and horses.

Quotas
under
various Acts
since 1757.

76. In 1757, the number to be raised was limited by the Act which fixed the quota to be raised by each county. The quota was altered from time to time; and in 1797 an addition to the quota, called the supplementary militia, was made, to last during the war, but it was soon merged in the regular militia (e). Under the Act of 1802 the Privy Council were to fix the quota every ten years, guided by the proportion between the number of men liable to serve (as appearing from the lists) and the quota fixed by the Act, and the Crown had power to increase the quota in time of invasion or rebellion. The Acts from 1852 to 1860, re-organising the militia, fixed the total number to be raised, with power to the Crown to increase it in case of actual invasion or imminent danger thereof (f).

Numbers
under Act
of 1871.

77. The Act of 1871 (now re-enacted in the Militia Act, 1882) directed that the numbers of the militia should be such as should from time to time be provided by Parliament (g), and such provision is in effect made by a vote of the sum required for the pay of

(a) 31 Geo. II, c. 26, s. 17. A parish might practically discharge its liability to provide militiamen by paying the fine for non-attendance of a volunteer which under 31 Geo. II, c. 26, as stated in the text, was 10*l*. per head; and in 1761 and subsequently, parishes were authorised to give bounties out of the rates to volunteers; this led also to half of the current price of a volunteer being paid out of the rates to a balloted man or a substitute; 2 Geo. III, c. 20, ss. 45, 47; 42 Geo. III, c. 90, ss. 42, 122.

(b) 2 Geo. III, c. 20, s. 120; 18 Geo. III, c. 59, s. 8; 9 Geo. III, c. 76; these provisions were not re-enacted in the consolidation of 1786, but the power was renewed temporarily by 34 Geo. III, c. 16, which developed the volunteers as a separate force. See Clode, *Mil. Forces*, i. 80; and below, para. 110, *et seq*.

(c) Clode, *Mil. Forces*, i. 290-299. Only 797 men were actually raised by ballot, and there were 14,156 substitutes for balloted men. See App. XVII to report of Mr. Stanley's Committee on the Militia, 1876 (*Parl. Paper*, 1877 C.—1654).

(d) 17 & 18 Vict. cc. 106, 107.

(e) 37 Geo. III, c. 3, amended by 37 Geo. III, c. 22, and 38 Geo. III, cc. 17, 18, 19, 56; merged in the general militia by 39 Geo. III, c. 104.

(f) 15 & 16 Vict. c. 50; 17 & 18 Vict. cc. 106, 107; 23 & 24 Vict. c. 84, ss. 20 & 21.

(g) 34 & 35 Vict. c. 86, ss. 6, 7, 9, re-enacted by 45 & 46 Vict. c. 49, s. 3.

a specified number of men, and the application of such sum by the Appropriation Act of each year. The quotas (which are only required in the event of a ballot) are to be fixed by the Privy Council (a); the existing quota was fixed in 1852 and continues until altered.

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78. Under the Act of 1662 militiamen were liable to be called out for training and exercise, and also in the case of invasion, insurrection, or rebellion. Conditions of service.

79. In 1757 the service of the militia was placed nearly in the position in which it remained until 1870, that is to say, the force was to be annually trained and exercised for a limited time, while in case of actual invasion or imminent danger thereof, or in case of rebellion, the Crown could order the force, or any part of it, to be drawn out and embodied. The period for the annual training was originally fixed in the Act, but afterwards left to be determined by the Crown; it must not be less than 21, nor more than 56 days, and the Crown can dispense with it entirely. In 1860 a preliminary training was required from every militiaman on his first entering the force, and if the militia were now raised this might be continued as long as six months (b). Annual training.

80. The power of embodying the force in cases other than those before mentioned, after having been conferred on the Crown at various times by temporary measures (c), was ultimately permanently enacted. In 1854 (the Crimean War) the Queen was authorised to embody the militia whenever a state of war existed between Her Majesty and any foreign power (d); but in 1870 the old provisions were superseded by the enactments authorising the embodiment in case of imminent national danger or great emergency, which were re-enacted in 1882, and are now in force (e). Ever since 1757 the law has required that the cause of embodiment should be communicated to Parliament if sitting, or declared in Council and notified by proclamation if Parliament is not sitting, and that, thereupon, Parliament, if adjourned or prorogued, should meet within a limited time, which now is 10 days (f). Power to embody.

81. The militia would, if raised, be liable to serve in any part of the kingdom, but not out of it; and under this rule the English militia were originally not liable to serve in Scotland or Ireland. The militia must now serve in any part of the United Kingdom (g). Militia liable to serve only in United Kingdom.

(a) 45 & 46 Vict. c. 49, s. 19.

(b) 23 & 24 Vict. c. 4, s. 14; c. 120, s. 19; 34 & 35 Vict. c. 86, s. 8; see now 45 & 46 Vict. c. 49, s. 14.

(c) In 1778, with a view to the suppression of the rebellion in America, embodiment was authorised, in case of rebellion in Great Britain or any territories or dominions thereto belonging, by 16 Geo. III. c. 3; in 1815 on "the prospect of a war with France," by 56 Geo. III. c. 77 (see Clode, *Mil. Forces*, i. 48); in 1857 and 1858, on the occasion of the Indian Mutiny, 20 & 21 Vict. c. 82; 21 & 22 Vict. cc. 4, 86.

(d) 17 & 18 Vict. c. 13. As to the effect of this on the men already enlisted, see Clode, *Mil. Forces*, i. 46.

(e) 33 & 34 Vict. c. 68, which did not apply to any man already enlisted, without his consent. The authority in this Act to raise additional militia in case of imminent national danger or great emergency was not re-enacted on the repeal of the Act in 1878, having been rendered unnecessary by the Act of 1871, declaring that the number of the force shall be such as may from time to time be provided by Parliament. The present enactments are in 45 & 46 Vict. c. 19, s. 18.

(f) 45 & 46 Vict. c. 49, s. 19.

(g) 45 & 46 Vict. c. 49, s. 12, re-enacting 38 & 39 Vict. c. 69, s. 49. The oath for balloted men in 51 Geo. III. c. 118, s. 1, and for volunteer militiamen in 38 & 39 Vict. c. 69, s. 31, specified the area of service, but this being inconsistent with the provisions for volunteer service in Gibraltar, Malta, &c., was omitted by 45 & 46 Vict. c. 49, s. 13. After 1757 the English militia were liable to serve in Scotland.

Ch. IX. This was first provided in 1811 (a), subject to certain restrictions, and then in 1859 (b) without those restrictions, which were entirely repealed by the Act of 1875. In 1859 a power was given to the Sovereign to accept voluntary offers by the militia to serve in the Channel Islands and the Isle of Man; this was extended by the Act of 1875 to service in Malta and Gibraltar; and as so extended was re-enacted in 1882 (c). A further extension to any part of the world was made in 1898. At the same time the Crown was authorised to employ militiamen volunteering to serve for not more than one year, whether an order embodying the militia was in force at the time or not (d).

Term of service.

82. A fixed term of service was first provided in 1757, and was then limited to three years, but afterwards increased to five years, at which it at present stands for balloted men. In 1873 power was given to enlist volunteer militiamen to serve for any period not exceeding six years, and to re-enlist men for a further period not exceeding six years (e).

Command of Militia.

Command of militia.
Act of 1661

83. The Act of 1661, temporarily legalising the militia under Charles II, referred to the dispute with Charles I as to the command of the militia, first by its title, in which it was described as "An Act declaring the sole right of the militia to be in the king, and for the present ordering and disposing the same"; and also by its preamble, which was expressed as follows: "Forasmuch as within all His Majesty's realmes and dominions the sole supreme government, command, and disposition of the militia, and of all forces by sea and land, and of all forts and places of strength is, and by the lawes of England ever was, the undoubted right of His Majesty and his royall predecessors, Kings and Queenes of England, and that both or either of the Houses of Parliament cannot nor ought to pretend to the same, nor can nor lawfully may raise or levy any warr, offensive or defensive, against His Majesty, his heires, or lawful successors" (f).

Powers of Lord Lieutenants under Act of 1662.

84. The Act of 1662(g), which re-organised the militia, while recognising by a preamble in identical terms the right of the Crown, practically took it away. It required the King under statutory

(a) 51 Geo. III, cc. 118, 128; 51 Geo. III, c. 114 (Regiment of Miners); 53 Geo. III, c. 132 (Tower Hamlets); 54 Geo. III, c. 10. See Clode, *Mil. Forces*, i. 301, 302, as to the opposition to the Acts. The principle had been adopted in temporary Acts, as in 1798, when some English regiments volunteered to serve in Ireland, and Acts were passed by the Parliament of Great Britain to enable His Majesty to accept the offer, and by the Parliament of Ireland to provide for the government of the forces so employed (38 Geo. III, c. 66, continued by 39 Geo. III, c. 5; 39 & 40 Geo. III, cc. 9, 15; 38 Geo. III (I.), c. 46; 39 Geo. III (I.), c. 64, ss. 13, 14). And again, in 1799 and 1804 and the following years, when some of the Irish regiments volunteered to serve in Great Britain, and Acts were passed to enable His Majesty to accept the offers (39 Geo. III (I.), c. 31; 44 Geo. III, c. 32, continued by 45 Geo. III, c. 31; 47 Geo. III, sess. 1, c. 6).

(b) 22 & 23 Vict. c. 38, ss. 1, 2.

(c) 22 & 33 Vict. c. 38, s. 4; 38 & 39 Vict. c. 69, s. 50; 45 & 46 Vict. c. 49, s. 12. A similar power had been given temporarily at the time of war in 1813 (54 Geo. III, cc. 1, 17), in 1855 (18 & 19 Vict. c. 1), and in 1858 (21 & 22 Vict. c. 85). In these cases, however, the number was limited to three-fourths of each regiment, though the area of service extended in the first case to Europe, and in the second and third cases to any place out of the United Kingdom.

(d) Reserve Forces and Militia Act, 1898.

(e) 36 & 37 Vict. c. 68, s. 1 (which uses the old term "enrol") re-enacted in 1875, 38 & 39 Vict. c. 69, s. 32, and in 1882, 45 & 46 Vict. c. 49, s. 8 (2).

(f) 13 Cha. II, stat. 1, c. 6. This preamble, which in terms goes beyond the title of the Act, and includes forces besides the militia, is still unrepealed. The rest of the Act was repealed by the Statute Law Revision Act, 1883 (26 & 27 Vict. c. 126).

(g) 14 Cha. II. c. 3.

power to issue Commissions of Lieutenancy for the different counties in England, and conferred on the lieutenants so appointed the chief powers in relation to the militia. They were empowered to commission the officers, raise the men, form the regiments, muster and exercise them, and in case of insurrection or invasion, to lead the forces as well within their counties as in any other counties in England. The result of the chief powers being vested in the lieutenants of counties was that the militia was regarded as a counterpoise of the standing army (a), and as a constitutional force under the control of Parliament rather than of the Crown, and for this reason was not made subject to military law (b).

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85. A power was indeed reserved to the King to appoint and remove the officers, and to give directions to the lieutenants as to arraying and dealing with the forces. But the Act of 1757 (c) limited this, leaving to the Crown only the power to approve and dismiss deputy lieutenants and to dismiss officers, while the local character of the force was intensified by requiring the lieutenants of counties and deputy lieutenants and officers to be qualified by the possession of landed property in their counties. On the other hand, the King was empowered to place the force, when embodied, but not during the annual training, under the command of a general officer; and had also power to appoint former officers and soldiers of the army to be adjutants and serjeants.

Powers of Crown.

86. The command of the militia remained in the same position until 1852, with the exception that ex-officers of the army and navy were permitted to serve without the property qualification. After the revival, however, of the militia in 1852, a change was made. The property qualification of the officers was reduced, and, after a further reduction in 1854, was entirely abolished in 1869, so that the officers ceased to be necessarily connected with the county or with the landed interest (d). Moreover, by the Act of 1852 and subsequent Acts, much larger powers were conferred on the Crown, both as to the qualifications and training of the officers, and as to other matters concerning the militia (e); but any detailed notice of these powers is rendered unnecessary by the complete transfer of the powers of the lieutenants of counties to the Crown by the Act of 1871 (f).

Changes in 1852 and subsequently.

87. In 1871 it was determined to combine the regular and auxiliary forces in one organisation in connection with different territorial districts. In furtherance of this scheme an Act was passed (f), by which the command of the auxiliary forces with all the powers of the lieutenants of counties and those of the Lord Lieutenant in Ireland in relation to any of such forces (except those

Powers of Lord Lieutenant re-vested in Crown by Act of 1871.

(a) Clode, Mil. Forces, I. 36, 37.

(b) See exemption from the Mutiny Act, 1 Will. and Mar., c. 5, s. 7. The pay was appropriated by Act of Parliament and not by warrant, and the estimates originated with a Committee of the House of Commons. Moreover, only one month's pay and therefore one month's service could be obtained without coming to Parliament. The preamble to the Act of 1802 laid stress on the force being under the command of officers having landed property.

(c) 30 Geo. II, c. 25.

(d) 15 & 16 Vict. c. 50, ss. 1-4; 17 & 18 Vict. c. 105, s. 31; c. 106, ss. 6-11 (Scotland); c. 107, ss. 5-7 (Ireland); 18 & 19 Vict. c. 100 (which made the qualifications uniform throughout the United Kingdom); 32 & 33 Vict. c. 13.

(e) As to appointment of officers, training and bounties to, and pay of men while not embodied, 15 & 16 Vict. c. 50; 17 & 18 Vict. cc. 13, 105, 106, 107. As to discharge of militiamen, 16 & 17 Vict. c. 13, s. 9; 17 & 18 Vict. c. 105, s. 42; c. 106, s. 61; c. 107, s. 25. As to place and time of training, 22 & 23 Vict. c. 38, s. 8. As to placing the force during training under the command of general officers, and attaching officers of regulars to the force during training, 32 & 33 Vict. c. 13, ss. 1, 2.

(f) 34 & 35 Vict. c. 86, s. 6, repeated in 38 & 39 Vict. c. 69, s. 21, and re-enacted by 45 & 46 Vict. c. 49, ss. 4-6 as to general militia, and 3rd sch. as to local militia.

Ch. IX. relating to the raising of the militia by ballot), were re-vested in the Crown, and declared to be exercisable through a Secretary of State, or any officers to whom Her Majesty, with the advice of a Secretary of State, might delegate such command and powers. The same Act also provided that the officers of the auxiliary forces should hold commissions from Her Majesty in the same manner as the officers of the regular forces; but a limited right of recommending persons for first commissions was reserved to the Lieutenants of counties.

Status of militia officers.

88. Up to 1882 it was provided by statute that militia officers should rank with officers of the regular forces as the youngest of their rank (a); after that date militia officers were not only commissioned like officers of the regular forces, but were always subject to military law, with power to sit on courts-martial for the trial of offenders belonging to the regular forces, and *vice versa* (b).

Provisions of Act of 1881.

89. The Army Act, to remove all doubt as to the power of command, declared that Her Majesty might make regulations as to the persons to exercise command over any part of Her forces, including the militia (c). The Militia Act, 1875, and the Regulation of the Forces Act, 1881 (re-enacted in 1882), also gave Her Majesty complete power to provide for the formation of militiamen into regiments or other military bodies, the formation of them into corps, and the distribution of the men among the corps, and generally for the government of the force (d).

Militia not subject to Mutiny Act at all till 1757.

90. The Act of 1662 authorised Lieutenants of counties to imprison mutineers and soldiers not doing their duties, and to inflict small fines or twenty days' imprisonment as a punishment; but it was not till 1757 that the force was made, when embodied, subject to the Mutiny Act and Articles of War. Except during embodiment, the men were subject only to civil fines, for drunkenness, disobedience, absence, &c. In 1761, however, the Mutiny Act was applied to the militia when out for training as well as when embodied. Men, however, who failed to appear were only liable to a fine till 1786, when they became liable in case of embodiment to be tried for desertion under the Mutiny Act (e).

Militia brought more under military law since 1852.

91. After 1852 the militia was by degrees brought more completely under military law. Thus, in 1854, men who failed to appear at the annual training were declared deserters, and made liable to a fine of 10*l.* (f). In 1875, militiamen during their preliminary training were made subject to the Mutiny Act by the Mutiny Act of that year, and under a subsequent Act of the same year if they failed to appear at the preliminary training were made triable as deserters (g). Militia officers were made at all times subject to military law by the Mutiny Act of 1877 (h). The old exemption of militiamen from capital punishment during annual training is omitted from the present Acts as unnecessary, because desertion and such like military offences are not capitally punishable, except on active service (i).

(a) 38 & 39 Vict. c. 69, s. 21. This was provided by the Act of 1757, but omitted from 45 & 46 Vict. c. 49, as rank is a matter for regulation by the Sovereign.

(b) A.A., 50, 175, 178.

(c) A.A., 71.

(d) 38 & 39 Vict. c. 69, s. 86; 44 & 45 Vict. c. 57 s. 4; re-enacted in 45 & 46 Vict. c. 49, s. 54.

(e) 2 Geo. III, c. 20, s. 99; 26 Geo. III, c. 107, s. 98.

(f) 17 & 18 Vict. c. 105, s. 45; c. 106, s. 58; c. 107, s. 24.

(g) 38 & 39 Vict. c. 7, s. 2; 38 & 39 Vict. c. 69, s. 59.

(h) 40 & 41 Vict. c. 7, s. 2.

(i) At one time militia deserters might be sentenced to serve in the regular forces, 39 Geo. III, c. 106; 49 Geo. III, c. 90, s. 127, repealed in 1875; and 43 Geo. III, c. 50, s. 5, only repealed in 1862.

*Expense of Militia and Supplemental Provisions.***Ch. IX.**

92. The expense of the militia was in 1662 divided between individuals (owners of property), counties, and parishes on the one hand, and the Crown on the other; the former provided equipments, horses, ammunition, &c., and pay for the annual training, while the Crown supplied pay in case of embodiment (*a*). Payment of expenses of militia.

93. In 1757 a different principle was adopted, and a separate Act was passed authorising the issue from the Exchequer and application of a sum for the pay, clothing, and expenses of the militia, and this Act was continued annually till 1874. The passing of this Act, for long merely a formal matter, became entirely meaningless after the militia were placed under the command of the Crown in 1871, and it was accordingly provided in 1874 that the pay and clothing of the militia should be regulated by Royal Warrant, orders, and regulations in the same manner as the pay and clothing of the regular forces (*b*). Act of 1757.

94. The storage of the arms, clothing, and equipments of the militia was in 1757 made a charge on the parishes; but in 1786 was transferred to the counties; and provision was then made for the permanent staff residing on the spot and taking care of the arms. After the change of system in 1871 (*c*) the counties were relieved from this, as well as other charges connected with the militia, and by Acts passed in 1872 and 1873 provision was made for the purchase of lands and the erection of barracks at the public expense, and the counties were authorised to transfer their storehouses to the Crown, or to sell them (*d*). Storage of arms, &c., a local charge till 1871.

95. From 1757 onwards the officers and men were allowed during the annual training and during embodiment to be billeted like the regular forces, and the permanent staff might be billeted at all times. Billeting.

96. Various enactments were made for relieving out of the poor rates families of militiamen when embodied or out for training; but this system, on the reform of the Poor Law in 1834, was abolished by the Poor Law Amendment Act of that year (*e*). Relief of families of militiamen.

97. When every parish was obliged to raise a certain number of militiamen, the discharge of a militiaman or his enlistment into the army necessarily threw on the parish the burden of providing another man. The power of discharge was therefore jealously watched, and the enlistment of a militiaman into the army was either prohibited, or very much restricted. At the same time individuals desirous to find substitutes, and parishes desirous to avoid a ballot, although forbidden to enlist men by beat of drum, competed for recruits with the recruiting officers of the Enlistment of militiamen into the army.

(a) Individuals were liable to advance one month's pay; and the Act provided that until this month's advance was repaid no further advance was to be required. This led to a difficulty in calling out the militia, which was removed by a temporary Act, 2 Will. & Mar. sess. 2, c. 12, re-enacted almost annually during the reigns of Will. & Mar., and Anne. Similar provisions were again made in 1715, 1 Geo. I, stat. 2, c. 14, revived in 1723, 9 Geo. I, c. 8, s. 6, and again in 1733, 7 Geo. II, c. 23, and in 1745, 19 Geo. II, c. 2. The money raised by the county was known as "trophy money."

(b) 37 & 38 Vict. c. 29. See also 38 & 39 Vict. c. 69, s. 86. The then existing Acts were 31 & 32 Vict. c. 76; 32 & 33 Vict. c. 66; and 36 & 37 Vict. c. 84, which had been annually continued by the Expiring Laws Continuance Act, and were to have effect as a Royal Warrant, until a new Warrant was made.

(c) By 34 & 35 Vict. c. 86.

(d) 35 & 36 Vict. c. 68; 36 & 37 Vict. c. 68, s. 8; 36 & 37 Vict. c. 84.

(e) See 43 Geo. III, c. 47, which consolidated the old enactments, and was repealed by 4 & 5 Will. IV, c. 76, s. 60, and by 38 & 39 Vict. c. 69, s. 98.

Ch. IX. regular army, and thus in time of war the bounty for recruits was raised to a very high sum (a).

Act of 1796. 98. In 1795 a change of policy took place, and subject to certain limitations, the enlistment of militiamen in the army was encouraged; and, in order to replace militiamen so enlisting, militia officers were authorised to enlist men by beat of drum (b).

Acts of 1852 and 1854. 99. Long after this, however, and even after the change of system in 1852, the old prohibition against the enlistment of militiamen in the army remained in force, although with a voluntarily enlisted militia the reason had disappeared. On the breaking out of war in 1854 prosecutions were instituted against militiamen who had enlisted in the army, and legislation was required to enable the Secretary at War to relieve from punishment the men who had so enlisted (c).

Act of 1875. 100. Further legislation authorised enlistment in the army; and by the Act of 1875 the enlistment of volunteer militiamen in the army was, as well as their discharge from the militia, placed entirely under the direction of the Secretary of State for War (d).

Local Militia.

Acts for raising forces to meet apprehended French invasion, 1796-1812. 101. At the end of the eighteenth and beginning of the last century various Acts were passed for raising forces to resist the threatened French invasion, which were based on the liability of every man to aid in the defence of the realm, either by personal service or by contributions (e).

Acts establishing local militia. 102. They were superseded in 1808 by Acts establishing a local militia in England and Scotland. These Acts were amended in the following years (f), and were finally consolidated in 1812. The general provisions of the Acts passed in that year (g) are still in force, though the local militia is in abeyance.

Account of local militia. 103. The local militia is in effect the old general levy, as the Acts provide for raising a force in each county by ballot, in the same manner as under the general Militia Acts, from among men between

(a) The ballot had thus a bad effect on enlistment for the army. See Clode, *Mil. Forces*, i. 289.

(b) In 1795, 35 Geo. III, c. 83. Such enlistment was also authorised by the Acts relating to the supplementary militia, 39 Geo. III, c. 106; 36 & 40 Geo. III, c. 1. The Consolidation Act of 1802 (42 Geo. III, c. 90) prohibited the enlistment, but authority to enlist men was given by a series of Acts from 1805 to 1813. 45 Geo. III, c. 31; 46 Geo. III, c. 124; 47 Geo. III, sess. 2, c. 57; 48 Geo. III, c. 64; 49 Geo. III, c. 4; 49 Geo. III, c. 53, s. 32; 51 Geo. III, cc. 20, 30; 53 Geo. III, c. 81; 54 Geo. III, cc. 1, 38.

(c) 17 & 18 Vict. c. 105, s. 42; c. 106, s. 61; c. 107, s. 25.

(d) 23 & 24 Vict. c. 94, s. 17; 38 & 39 Vict. c. 69, ss. 75, 76.

(e) 37 Geo. III, cc. 4, 24, and as to Scotland, cc. 5, 39. In 1797 a force of provisional cavalry was to be raised as an augmentation to the militia under 37 Geo. III, cc. 6, 23, 139; 38 Geo. III, cc. 51, 94; 39 Geo. III, c. 23. As to returns of men, provisions, &c., 38 Geo. III, c. 27; 43 Geo. III, c. 55. An army of reserve was provided by 43 Geo. III, cc. 82, 100, 123, and 44 Geo. III, c. 56; and as to Scotland, 43 Geo. III, cc. 83, 124, 44 Geo. III, c. 66; and as to Ireland, 43 Geo. III, c. 85; 44 Geo. III, c. 74; and as to the City of London, 43 Geo. III, c. 101; 44 Geo. III, c. 96; the first of which recites that the City, notwithstanding their exemption from the liability to provide men for military service, have offered to raise the force mentioned in the Act. A levy *en masse* was provided for by 43 Geo. III, c. 96, amended by c. 120. The first Act recites that it is expedient "to enable His Majesty more effectually to exercise his ancient" and undoubted prerogative of requiring the military service of all his liege subjects in case of an invasion of the realm by a foreign enemy," extended to the City of London by 43 Geo. III, c. 125. The foregoing Acts were repealed in 1806 by 46 Geo. III, cc. 51, 63, 90, 144; and the Training Act (46 Geo. III, c. 90) was passed, which was only repealed in 1872 by the Statute Law Revision Act (35 & 36 Vict. c. 63), but was never put in force.

(f) 48 Geo. III, c. 111; and as to Scotland, c. 150; amended by 49 Geo. III, cc. 40, 48, 82, 129, and 50 Geo. III, c. 25. See Clode, *Mil. Forces*, i. 325-332.

(g) 52 Geo. III, c. 38; and as to Scotland, c. 68. See also the Amendment Acts, 52 Geo. III, c. 116; 53 Geo. III, cc. 28, 29, and 45 & 46 Vict. c. 49, 3rd sched.

the ages of 18 and 30. The number in each county, including any effective yeomanry and volunteers in the county, was to be equal to six times the quota fixed for the regular militia of the county, but since 1871 is to consist of such number of men as may from time to time be provided by Parliament (a). A man when drawn in the ballot must serve for four years without any power to find a substitute, and without receiving any bounty. With some exceptions (such as men with previous service, or men with more than two children), there are no exemptions from liability to serve. Parishes may provide volunteers and pay them bounties out of the rates. The counties are liable to an annual fine of 15*l.* for each man short of the quota.

104. The force is to be annually trained, and may be called out for the suppression of riots, and preliminary training may be required. The force may be embodied in case of invasion or the appearance of an enemy on the coast, and in case of rebellion; Parliament is to meet within fourteen days after the order for embodiment (b). As regards command, officers, and discipline, the local militia is almost precisely in the same position as the general militia (c), and the force whenever called out is subject to military law. The property qualification of officers was abolished by 32 and 33 Vict. c. 13. The expenses were to be paid by the Crown, and the storage of arms, which was formerly a county charge, is now also borne by the Crown (d).

Training,
command,
and embodi-
ment.

105. The force was actually raised by ballot and called out for annual training until the peace of 1815 (e). In 1813 parts of the local militia were authorised to volunteer for service out of their counties with the object of guarding French prisoners (f). After that peace the King in Council was authorised (g) to suspend the ballot for and enrolment of the local militia, and the force has not since been raised. Orders in Council were made annually under the Act up to the year 1832 (h), when they seem to have been discontinued, and the Act authorising the suspension was repealed as obsolete in 1873 (i).

Not raised
since 1815.

Militia in Scotland and Ireland.

106. The early Acts above-mentioned relate only to the militia of England. The militia of Scotland was not organised by an Act of the Parliament of Great Britain until 1797, though before that time corps of Fencibles were raised and embodied (j). In that year an Act was passed (k), which as subsequently amended (l) provided for raising a force of militia during the war, by ballot among men between the ages of 19 and 30. In 1802 these Acts were

Militia of
Scotland
before and
under Act of
1802.

- (a) 34 & 35 Vict. c. 86, ss. 7, 8, 19, re-enacted by 45 & 46 Vict. c. 49, 3rd sched.
(b) The Act of 1870 (33 & 34 Vict. c. 68), which allowed the militia to be embodied in case of imminent national danger or great emergency, was repealed by 38 & 39 Vict. c. 69, as if it had not applied to the local militia.
(c) See above, para. 83, *et seq.*, and Militia Act, 1882 (45 & 46 Vict. c. 49, 3rd sched.). The Army Act applies to the local as well as to the general militia.
(d) It appears to have been transferred to the Crown, as in the case of the general militia, by 35 & 36 Vict. c. 68.
(e) Annual training is mentioned in the Annual Register, 1811, p. 32.
(f) 54 Geo. III. c. 19; Annual Register, 1813, p. 205.
(g) By 56 Geo. III. c. 36.
(h) Clode, *Mil. Forces*, i. 333, in which 1836 appears to be a misprint for 1832.
(i) By the Statute Law Revision Act, s. 73, (36 & 37 Vict. c. 91).
(j) See preamble to 18 Geo. III. c. 59, s. 4.
(k) 37 Geo. III. c. 103.
(l) 38 Geo. III. cc. 12, 44; 39 Geo. III. c. 62; 41 Geo. III. (U.K.), c. 67.

Ch. IX. replaced by an Act (*a*) providing for the organisation of the militia on a basis similar to that on which the militia of England was organised by the Consolidation Act passed in that year (*b*).

Militia of
Ireland.
First Act.

107. The militia of Ireland was first organised in 1715 (*c*), when His Majesty and the Chief Governor were empowered to issue to Protestants commissions of lieutenantancy and array for counties and cities, empowering them to arm and train all Protestants between the ages of 16 and 60, who were bound to appear or find substitutes; and in case of insurrection, rebellion, or invasion to serve in any part of the Kingdom. His Majesty and the Chief Governor were empowered to commission officers and approve of deputy lieutenants, but the command of the force was vested in the lieutenants of counties. Mutiny, non-appearance, and neglect of duty were punishable by fine or imprisonment, and the force was not made subject to military law.

Amending
Acts.

108. This Act was amended in 1719 (*d*) and again in 1745 (*e*) and, as so amended, was continued from time to time until 1777, when it was replaced by an Act (*f*) which seems to have contemplated the raising of men by ballot, though in point of fact it made no provision for raising men otherwise than by voluntary enlistment, and did not fix any term of service. This Act being found insufficient, was repealed and replaced in 1793 by an Act (*g*) which provided for raising a force of militia according to quotas fixed in the Act, by ballot among men between the ages of 18 and 45, to serve for four years. Governors of counties were authorised to array and train the force, and to appoint deputies, subject to the approval of the Lord Lieutenant; and His Majesty was empowered to appoint a commandant for each county, who was authorised to appoint officers, having property qualifications, subject to the approval of the Lord Lieutenant. The force might be embodied in case of invasion, &c., and was, during training and embodiment, subject to the Mutiny Act. The raising of the force was made compulsory by clauses imposing a fine of 5*l.* a year on each county for each man deficient, and enlistment in the army was prohibited. This Act of 1793 was amended in 1795 (*h*), and again in every succeeding year till the Union of Ireland with Great Britain in 1801.

Acts after
Union.

109. For some years after the Union the force continued to be raised and governed under the ante-Union Acts, as amended by several Acts passed by the Parliament of the United Kingdom (*i*), which encouraged voluntary enlistment by means of bounties to be advanced by the Treasury and repaid by the counties. Finally, all the Acts were consolidated in 1809 by an Act (*j*) which fixed the establishment of each regiment, and provided for raising the men by means of ballot, but gave power to the Lord Lieutenant to authorise the raising of men by voluntary enlistment by means of bounties advanced by the Treasury and repaid by the counties, and also to suspend the raising of any regiment. The Acts since 1852 have been noticed before.

(*a*) 42 Geo. III, c. 91.

(*b*) 42 Geo. III, c. 90.

(*c*) 2 Geo. I (I), c. 9.

(*d*) 6 Geo. I (I), c. 3.

(*e*) 19 Geo. II (I), c. 9.

(*f*) 17 & 18 Geo. III. (I), c. 13.

(*g*) 33 Geo. III (I), c. 22.

(*h*) 35 Geo. III (I), c. 8.

(*i*) 41 Geo. III (U.K.), c. 6; 42 Geo. III, c. 109; 43 Geo. III, oc. 2, 33.

(*j*) 49 Geo. III, c. 120.

Legislation of 1907.

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109A. Under the re-organisation of the forces which took place in 1907 and 1908 the militia ceased to be raised in the United Kingdom. The greater number of the existing battalions were in the latter year converted into units of the Special Reserve and the remainder were disbanded. The militia in Bermuda, Channel Islands and Malta were not affected by this re-organisation.

Legislation of 1907 as to militia.

4. YEOMANRY AND VOLUNTEERS.

General Sketch of History.

110. It has been mentioned before that volunteers were accepted in aid of the ballot for the militia, first as individuals, and then as separate companies, but these separate companies formed, in fact, part of the militia (a). Besides the above, volunteer corps were raised independently of any Act; some of them were known as Fencibles, and were chiefly raised in Scotland. Enactments were passed, however, to prevent the officers vacating their seats in Parliament by the acceptance of commissions, and to regulate their rank with officers of the militia (b).

Early volunteer corps.

111. In 1794 an Act was passed to provide that any corps of volunteers which had been raised by officers commissioned by the King, or the lieutenant of the county, or by other persons authorised by the King, and which in case of invasion or of riot should assemble and march, should receive the same pay as the regular forces, and be subject to military discipline; such volunteers were to be exempted from liability to serve in the militia (c). These corps, it will be observed, were distinct from the militia. This Act expired at the peace of Amiens; but in 1802 another Act was passed authorising the raising of yeomanry and volunteer corps (d). The eagerness to volunteer and the energy with which military preparations were taken up throughout the country for the purpose of resisting the threatened invasion of the French under Napoleon are well known, and upwards of 400,000 men were enrolled (e). The men so enrolled were exempted not only from the regular militia, but also from the other forces which, as before mentioned, were organised at this period (f), and the allegation was made that by reason of this exemption the volunteers were a disadvantage as interfering with the efficiency of the other forces.

Acts of 1794 and 1802.

112. In 1804 an Act was passed in the face of considerable opposition for consolidating and amending the Acts relating to the yeomanry and volunteers, and this was the Act under which, as amended by subsequent Acts, the Yeomanry in Great Britain were raised and served down to 1901 (g).

Act of 1804.

112A. Before the Act of 1901, mentioned in paragraph 112B, came into operation, the Yeomanry of Great Britain were in fact volunteer cavalry, and consisted of corps whose services had been offered to and accepted by the Sovereign, whether under the law existing before the Act of 1804 (h), or subsequently under the powers conferred by that Act.

Position of yeomanry up to 1901.

(a) See 18 Geo. III, c. 59; 19 Geo. III, c. 76; 34 Geo. III, c. 16.
 (b) 18 Geo. III, c. 59; 35 Geo. III, c. 83, s. 10.
 (c) 34 Geo. III, c. 31; 38 Geo. III, cc. 27, 51.
 (d) 42 Geo. III, c. 66, amended by 43 Geo. III, c. 121; 44 Geo. III, c. 18.
 (e) Stanhope's Life of Pitt, iv. 77, ch. xxxvi; Clode, Mil. Forces, i. 313, 314.
 (f) See above, para. 101. As to the relation of these volunteers to the other forces, see Clode, Mil. Forces, i. 312.
 (g) 44 Geo. III, c. 54, amended by 46 Geo. III, cc. 125, 140; 56 Geo. III, c. 39; 57 Geo. III, cc. 41, 44; 7 Geo. IV, c. 58; 51 & 52 Vict., c. 31, s. 2. The Act of 1804 was repealed as to volunteers in Great Britain by the Volunteer Act of 1863.
 (h) 44 Geo. III, c. 54, s. 3.

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The number of the Yeomanry was unlimited and enlistment voluntary. They did not rank as effective unless trained for a certain number of days in each year. Originally, under the Act of 1804, they were liable in case of invasion, or the appearance of any enemy in force on the coast of Great Britain to assemble for military service in any part of Great Britain; but under the National Defence Act, 1888 (*a*), they were made liable to be called out for actual military service in any part of Great Britain whenever an order embodying the Militia was in force, and the existing machinery for embodying and disembodying the Militia was applied to the Yeomanry. They were also able, under certain circumstances, to assemble voluntarily for improvement in military exercise, or to act for the suppression of riots (*b*). Under an Act of 1884 (*c*), orders and regulations could be made as to the pay and pensions of the Yeomanry. Unlike the Volunteers, the Yeomanry were, even before 1901, subject to military law when being trained or exercised alone.

The Act of 1804 did not apply to Ireland, but provision was made for the formation of a Yeomanry Corps in that country by an Act of 1802 (*d*). This Act differed from the English Act in providing for a Yeomanry on a different footing to the Yeomanry of Great Britain, and consisting of troops voluntarily enrolled for the protection of property and the preservation of peace in their locality, and not liable to be called out compulsorily.

The position of the Yeomanry under the old system, as regards subjection to military law, was as follows: If a corps of Yeomanry was called out on actual military service, or was being trained or exercised, whether it had been called out or assembled voluntarily, and whether it was serving alone or with any portion of the regular forces or of the Militia when subject to military law, every member of that corps was subject to military law. Individual members of a corps of Yeomanry were also subject to military law when they were attached to or acting with any regular forces, or when they were serving in aid of the civil power (*e*).

The Act of 1804 has not been repealed, and, subject to the provisions of the Act now to be mentioned, would still apply to the Yeomanry if raised.

Position of
yeomanry
after 1901.

112B. But, under an Act of 1901 (*f*), the previous character of the Yeomanry as a body of volunteer cavalry was radically changed, and the position of members of the Yeomanry was in the main assimilated to that of members of the general Militia. The Act of 1901 applied only to members of the Yeomanry receiving commissions or enlisting after the 16th August, 1901; and in order to quiet certain doubts which had arisen, an Act of the following year, expressly applied to the Yeomanry sections three and four of the Militia Act, 1882, relating to maintenance and government (*g*). These two Acts applied to Ireland equally with the rest of the United Kingdom, with the result that a force of Yeomanry could be raised in Ireland on the same footing as that in Great Britain; and two regiments of Yeomanry were raised in Ireland.

The power of the Crown to raise Yeomanry does not appear to be subject to any restriction as to numbers.

(*a*) 51 & 52 Vict., c. 31.

(*b*) 44 Geo. III, c. 54, ss. 5, 22, 23 & 46; 56 Geo. III, c. 39.

(*c*) 47 & 48 Vict. c. 55, s. 2.

(*d*) 42 Geo. III, c. 68.

(*e*) A. A., s. 176 (7); 44 Geo. III, c. 54, ss. 22, 23.

(*f*) 1 Edw. VII, c. 14.

(*g*) 2 Edw. VII, c. 39.

113. After the peace of 1814 the foot volunteers fell almost entirely into abeyance; but in 1859, in consequence of a panic respecting the hostile tone of the French army and government and the defenceless state of the country, they were revived, chiefly as rifle volunteers, but partly as light horse, artillery, and engineers. The old Act was soon found unsuitable for the organisation of the new force, and was replaced by an Act of 1863, which was again amended in 1869, 1881, 1895, 1897 and 1900 (*a*).

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Revival of
volunteer
in 1859.

Legislation of 1907.

114. Under the reorganization of 1907 and 1908 the Yeomanry ceased to be raised as such, and the existing Yeomanry units were transferred to the Territorial Force, with the exception of the two Irish regiments, which were disbanded and reformed into Special Reserve units. The Yeomanry, however, though absorbed into the Territorial Force, still retain their old title, *i.e.*, are still known as "Yeomanry."

Legislation
of 1907 as to
volunteers.

The existing units of volunteers were at the same time transferred to the Territorial Force, and volunteers have not since been raised in the United Kingdom, although the Volunteer Acts remain in operation. The volunteers in Bermuda and the Isle of Man were not affected by this re-organization.

5. BILLETING, IMPRESSMENT OF CARRIAGES, &c.

Billeting.

115. The practice of billeting has at times been of great importance in English history.

Billeting.

In early times troops were quartered under an order from the king, or some officer authorised by him, such as the High Harbinger, directed to the civil magistrate of the district, requiring him to provide quarters and provisions. This right to quarter was probably connected with the right of purveyance, and as the need of quartering only arose in time of war, the exercise of the right could not be complained of by those who were liable to serve in person or provide soldiers, arms, and provisions (*b*).

*Billeting in
early times.*

116. But, like the right of purveyance, the right to quarter was no doubt abused and led to oppression; and when it came to be enforced to provide quarters for soldiers returning from the wars and without employment, or (as in the reign of Charles I) to punish towns which had displeased the Court by returning unacceptable candidates to Parliament or otherwise (*c*), the abuse became intolerable, and billeting was consequently declared to be illegal by the Petition of Right (*d*).

*Abuse of the
practice,
and declara-
tion of
illegality
thereof by
Petition of
Right.*

117. The practice nevertheless continued, though not without remonstrance, during the reign of Charles II (*e*), until 1679, when it was again declared to be illegal by an Act in which Parliament

*Billeting
under
Charles II.*

(*a*) The 1st Middlesex and 1st Devonshire rifle volunteers existed some years before 1859. The Honourable Artillery Company also never ceased to exist. The Act of 1863 is 26 & 27 Vict. c. 65; of 1869, 32 & 33 Vict. c. 81; of 1881, 44 & 45 Vict. c. 57; of 1895, 58 & 59 Vict. c. 23; of 1897, 60 & 61 Vict. c. 47; of 1900, 63 & 64 Vict. c. 39.

(*b*) Scott's Brit. Army, if. 451, and Commissions in Rymer. The word "billet" is a diminution of "bill," a note, and is not derived from "bil," Latin billus, a stick used by slaves, nor from its derivative "billet," a wedge of gold or a log of wood, the size of which was fixed by the Acts 27 Edw. III, stat. 2, c. 14, and 43 Eliz. c. 14, to be 3 ft. 4 in. by 7½ in. (Wedgwood's Etym. Dict.). The French word is derived from the English (Littré). The word in relation to the quartering of troops is used by Shakespeare, Othello, Act ii, Sc. 3.

(*c*) See Forster's Life of Sir John Eliot, ii. 57, 98, 378, note.

(*d*) 3 Cha. I, c. 1.

(*e*) Clode Mil. Forces, i. 80, 81.

(M.L.)

M 2

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provided money for disbanding the troops, and, on condition of the disbandment, granted an indemnity for past illegal quarterings. This declaration of illegality, as well as that in the Petition of Right, is still in force (*a*).

Billeting
under
James II.

118. James II, however, again violated the law, and issued orders for billeting (*b*), which gave rise to one of the complaints against him mentioned in the Bill of Rights (*c*), after which the practice of billeting, except under statutory authority, was discontinued. The prevalence of the practice of billeting in the reigns of Charles II and James II arose from the necessity of providing quarters for the troops they maintained in time of peace; and the complaints of the illegality of the practice were intensified by those troops being maintained without the consent of Parliament.

Billeting
first autho-
rised by
Parliament
in Mutiny
Act, 1689.

119. When a standing army was, as before mentioned, authorised by Parliament after the Revolution, it became necessary to make legal provision for the accommodation of the army, as the barrack accommodation was insufficient, and accordingly, in the year 1689, the second Mutiny Act (*d*) authorised billeting. That Act, while affirming the illegality of billeting, as declared by the Petition of Right and the Act of Charles II, recited that there was "occasion for the marching of many regiments, troops, and companies in several parts of this kingdom towards the sea-coasts and otherwise," and empowered the constables and other chief officers and magistrates of cities, boroughs, towns, and villages, and other places, and no others, to quarter and billet officers and soldiers in "inns, livery stables, alehouses, victualling houses, and all houses selling brandy, strong waters, cyder, or metheglin, by retaile, to be drank in their houses, and noe other, and in noe private houses whatsoever."

Billeting
under Army
Act.

120. The power thus conferred was subsequently re-enacted in every Mutiny Act, until it was embodied in Part III of the Army Discipline and Regulation Act, 1879, now replaced by Part III of the Army Act. As the Army Act is only in operation by virtue of an Act passed annually, billeting continues illegal except to the extent expressly allowed by the Army Act, and so long only as that Act is kept in operation (*e*). The Army (Annual) Act specifies the prices to be paid for billeting.

Billeting
illegal
except so
far as
expressly
authorised.

121. The recital above quoted indicated that billeting was to be only of troops on the march, and the doubt which hence arose as to the power to billet the guards in Westminster led to the insertion in the Mutiny Act of 1707 of a special enactment, authorising them to be so billeted. This enactment was annually re-enacted until 1879 (*f*). In other parts of the country, however, troops were frequently billeted after they had arrived at their destination, under colour of a presumption that they were still on the march, and that the route authorising them to be billeted was still in force.

Billeting in
private
houses
illegal.

122. From the time when billeting was first authorised by the Mutiny Act down to the year 1909, when important changes were made (*see* para. 127A), no alteration in principle, and but little in detail, was made in the law as regards England. That law never allowed billeting in private houses, though before the Revolution both Charles II and James II issued orders for such billeting (*g*).

(a) 31 Cha. II, c. 1.

(b) Clode, Mil. Forces, i. 57, 61, and Appendix xii.

(c) 1 Will. & Mar. sess. 2, c. 2.

(d) 1 Will. & Mar. sess. 2, c. 4.

(e) The Acts prohibiting billeting were suspended in express terms by the Mutiny Acts: they are now suspended in general terms by A. A. 102.

(f) Clode, Mil. Forces, i. 232, 238.

(g) Clode, Mil. Forces, i. 57, 61, 81, and App. xii.

123. As regards Scotland, billeting was regulated by a number of Acts passed before the Union with England, which, while prohibiting free quartering, contained no definition of the houses liable to billets, so that private houses were not exempt. At the time of the Union, in 1708, the Mutiny Act was extended to Scotland, and a provision was inserted (a) allowing officers and soldiers to be quartered in such and the like places and houses as they might have been quartered in by the laws in force at the time of the Union.

This provision was annually re-enacted until 1857, when the provisions as to billeting in Scotland were assimilated to those in England (b).

124. As regards Ireland, billeting was regulated by Acts passed before the Union with Great Britain, which allowed billeting in public houses (described in much the same terms as in England), and "where there shall not be found sufficient room in such houses, then in such manner as has heretofore been customary." After the Union the law remained the same, the provisions of the Irish Acts being at first continued by, and afterwards re-enacted in, the Mutiny Act until the year 1879, when the words allowing billeting in private houses were omitted from the Army Discipline and Regulation Act, and billeting was placed on the same footing throughout the United Kingdom (c).

125. Although billeting was oppressive and generally unpopular as well as detrimental to the soldier (d), yet down to the end of the eighteenth century the opponents of a standing army objected to the building of barracks on the ground that it facilitated the maintenance of the army to the danger of the constitution and to the oppression of the people (e), and so long as these objections prevailed, billeting was a necessity. In 1792, however, steps were taken for providing sufficient accommodation for the troops (f), and during the nineteenth century barracks were gradually built, so that billeting is now hardly ever resorted to for the regular forces, except when actually moving, and the introduction of railways has greatly diminished its necessity even on those occasions.

126. A check has always existed on the arbitrary exercise of the power of billeting, the power having been entrusted to civil authorities, namely, the constable in the first instance, or in his default the justices; and these authorities have been held liable to pay damages to persons on whom they billet soldiers improperly (g).

127. Moreover, it was always assumed that troops can only be moved by authority of a route signed on behalf of the Crown (h).

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Billeting in Scotland.

Billeting in Ireland.

Necessity of billeting while barrack accommodation insufficient.

Checks on abuse of practice.

Routes, authority for billeting.

(a) 7 Ann. c. 4, s. 22.

(b) 20 Vict. c. 13.

(c) The most important changes in billeting law, as regards England, will be found in the Mutiny Acts for 1701, 1702, 1707, 1712, 1715, 1757, 1763, 1800, 1826, 1829, 1858, and in A.A.A., 1909. See also *Parker v. Flint*, 13 Mod. Rep., 256 (S. C. sub nomine *Parkhurst v. Foster*), 1 Lord Raymond, 479.

As regards Scotland, billeting was regulated by Acts passed in 1645, 1646, 1647, 1649, 1678, 1689 (Claim of Right), 1693, c. 2, 1698, c. 9, 1718, 1844, and 1857.

As regards Ireland, billeting was regulated by Acts passed in 1707, 1717, 1779, 1782, 1801, 1813, and 1829.

(d) See many details as to the difficulties which arose as to billeting in Clode, *Mil. Forces*, i. chap. xi.

(e) Clode, *Mil. Forces*, i. 221, 242.

(f) Under a barrack establishment set up by the military authorities; the duties were, however, in a few years transferred to the Board of Ordnance. Clode, *Mil. Forces*, i. chap. xii.

(g) This was decided in 1697, in the case of *Parker v. Flint*: note (a) *supra*.

(h) Clode, *Mil. Forces*, i. 219. A route is an order of the Crown directing some military authority to move troops as considered necessary and requiring the civil authorities to assist in providing quarters and impressing carriages. It does not quite appear whether the inability to move troops without a route was in consequence of the necessity of obtaining by means of the route carriages and billets, or of the route being a necessary authority for military reasons.

Ch. IX. These routes have always been signed by some civil officer, and it was the practice, which ultimately received statutory authority (a), for constables and justices to billet only on the production of such routes. Formerly the routes were signed from time to time, as they were wanted, by the Secretary at War, but in 1857 (soon after the creation of the office of Secretary of State for War) they were signed by the Secretary of State in blank, and issued to the military authorities to be used as required (b). The present practice is to have printed copies of the various routes (general, district, regimental, or deserter) signed in blank in lithograph by the Secretary of State in the name of the King. The details of the movement of troops are filled in by the military authority issuing the route, which is signed by an officer authorised to do so, if a general route, on behalf of the Quartermaster-General, and if a district route, on behalf of the general officer commanding.

Billeting in
case of
emergency.

127A. By the Army (Annual) Act of 1909 the existing powers of billeting in cases of emergency were substantially increased. Before that Act, as has been already pointed out, the only persons liable to billets were keepers of victualling-houses, &c. It was realized, however, that when the Territorial Force was embodied the accommodation in victualling-houses in the localities where it would be necessary to concentrate the forces would be entirely inadequate. It was, therefore, provided that when the Territorial Force is embodied, men belonging to that force or to the regulars may be billeted elsewhere than in the victualling-houses.

The authority to be entrusted with the duty of selecting the houses in which men are to be billeted is the Chief Officer of the Police, who, however, is required to act under the instruction of the police authority, *i.e.*, in England, elsewhere than in the Metropolitan Police District, the Standing Joint Committee in counties and the Watch Committee in boroughs having a separate Police Force.

The powers are only exercisable when the Territorial Force is embodied and the Territorial Force can only be embodied when a proclamation calling out the Reserves on permanent service is in force, and such proclamation can only be issued in the case of imminent national danger or great emergency.

Billeting
the
auxiliary
forces.

128. From 1757 onwards the Militia Acts authorised the militia when out for training, and when embodied, to be billeted, and this was done without a route under an order from the lieutenant of the county, and since 1871 from the commanding officer (c). Under s. 181 of the Army Act the provisions of the Act as to billeting now apply to all the auxiliary forces, *i.e.*, at present, the Territorial Force.

Impressment of Carriages, &c.

Prerogative
right of pur-
veyance.

129. Until the Restoration, carriages and horses could be obtained for the movement of the troops under the Sovereign's prerogative of purveyance. This prerogative was abolished in 1660 (d) in consequence of the great oppression caused by it, but in 1662 a power

(a) A.A., 103.

(b) Clode, *Mil. Forces*, i. 219.

(c) Clode, *Mil. Forces*, i. 42, and the various Militia Acts.

(d) By 12 Cha. II, c. 24, s. 11.

was given temporarily to impress carriages and horses for the use of the navy and the ordnance (a).

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130. The army in general was omitted, perhaps on purpose, from this Act, but in 1692 a section was added to the Mutiny Act (b) authorising justices when required by an order from the Crown to direct the constables to provide carriages for the use of the army when on the march within the kingdom, and specifying the maximum distance to be travelled, and the price to be paid. This section was intended to provide for the impressment of carriages to convey arms and baggage only (c), and contained restrictions similar to those now in force prohibiting soldiers (other than sick or wounded) from riding in the carriages, and forbidding the impressment of saddle horses. In 1799 a section was added (d) enabling the Crown in case of emergency to require the justices to provide carriages, saddle horses, and vessels for the conveyance of persons as well as baggage. The two sections were annually repeated in the Mutiny Act, with no alteration in principle, and very little in detail, down to the year 1879, when they were embodied in Part III of the Army Discipline and Regulation Act, which has been replaced by the Army Act. The power of impressment was extended in 1909 to include motor cars and other locomotives, and in 1913 to include aircraft of all descriptions.

Impressment under the Mutiny Act.

131. Impressment of carriages in Scotland was long regulated by Acts passed before the Union with England, which, after that event, were annually kept in force by a provision in the Mutiny Act till 1857, when the provisions applying to England were extended to Scotland (e). In Ireland also impressment of carriages was regulated until 1813 by Acts passed before the Union, and kept in force after that event by a provision in the Mutiny Act. In that year (f) the provisions of the Irish Acts were transferred into the Mutiny Act, and consolidated as far as possible with the provisions applicable to England, but many differences in detail remained, some of which are still to be found in the third schedule to the Army Act (g).

Scotland and Ireland.

132. The power of impressment, like that of billeting, is exercised only by the civil authority, that is to say, the justices and constables. In the case of impressment for ordinary purposes these authorities could at first act only under an order from the Crown, which necessarily was countersigned by the Secretary at War or some Minister; but after 1708 (h) orders were allowed to be signed

Orders authorising impressment.

(a) 14 Cha. II, c. 20, which recited the repeal of the right of purveyance by 12 Cha. II, c. 24. The Act expired but was revived for seven years by 1 Ja. II, c. 11, was again continued by 4 Will. & Mar. c. 24, and again by 11 Will. III, c. 13, but not subsequently, and was repealed by the Statute Law Revision Act, 1863. The requisition was to be made by warrant from the Lord High Admiral or two Commissioners of the Navy or from the Master or Lieutenant of the Ordnance, directed to two justices of the peace. The maximum distance to be travelled and the rate of remuneration were fixed by the Act.

(b) 4 Will. & Mar. c. 13, s. 27.

(c) See 7 Ann. c. 4, s. 35.

(d) 39 Geo. III, c. 20, s. 46.

(e) 20 Vict. c. 13.

(f) 53 Geo. III, c. 17.

(g) The principal changes in the law as to impressment of carriages were:—

1. As regards England. 7 Ann. c. 4, s. 37; 39 Geo. III, c. 20, s. 46; 39 & 40 Geo. III, c. 27, s. 45; 56 Geo. III, c. 10, s. 73; 10 Geo. IV, c. 6.

2. As regards Scotland. Impressment was regulated before the Union by an Act of the Parliament of Scotland, 1693, c. 11. For subsequent changes see 53 Geo. III, c. 11, s. 87; 10 Geo. IV, c. 6; 20 Vict. c. 13.

3. As regards Ireland, see Acts of Parliament of Ireland, 6 Ann. c. 14; 3 Geo. II, c. 10; 15 Geo. II, c. 6; 7 Geo. III, c. 14; 19 & 20 Geo. III, c. 16; 21 & 22 Geo. III, c. 43; and 41 Geo. III (U.K.), s. 11, s. 55; 53 Geo. III, c. 17; 7 Geo. IV, c. 10, s. 83.

(h) 7 Ann. c. 4.

Ch. IX. by the General of the Forces, while they might also be signed by the Master-General or Lieutenant-General of the Ordnance from 1720 (a) to 1855, when the Board of Ordnance was abolished; and since 1807 (b) they have been allowed to be signed by any person duly authorised in that behalf. In practice, however, the power of impressment has been exercised only in pursuance of a route signed as in the case of a route authorising billeting; and this practice has now received statutory sanction in the Army Act (s. 112). Impressment in case of emergency was authorised by the Mutiny Act only on an order signified by the Secretary at War, or after the transfer of his duties, by the Secretary of State for War, or in Ireland by the Chief Secretary or Under Secretary, or the first clerk in the Military Department, and the law in this respect remains unchanged (c), with the exception that such orders can no longer be signified in Ireland by any other official than the Chief or Under Secretary. The Act imposes penalties for disobedience to a requisition, but does not authorise the seizure of the carriages, &c., unless an order calling out the reserves or for the embodiment of the militia is in force; in which case, the requisition may extend to purchase as well as hire, and a person refusing or neglecting to furnish carriages, &c., as ordered, is liable to have them seized (s. 115 (7) (8)). If, in any other case, they were seized, the owner would have a remedy by action for damages.

Impressment of carriages for the auxiliary forces.

133. The Militia Acts made provision for the impressment of carriages for the militia, in 1757, when embodied, and in 1786, when in training. Under s. 181 of the Army Act the provisions of the Act as to impressment of carriages apply to the auxiliary forces.

Exemptions from tolls.

134. The subject of exemption from tolls is nearly connected with that of impressment of carriages. The exemption of carriages and vessels employed under requisitions of emergency was introduced in 1799 (d), when impressment under such requisitions was first allowed. The general exemptions now conferred by s. 143 of the Army Act were introduced into the Mutiny Act in 1803 (e), and 1807 (f). The clause as to payment of ferries in Scotland dates from 1721 (g). Exemptions from turnpike tolls in England are also conferred by the General Turnpike Act of 1822 (h), and by various local Acts. The provisions were extended to the Army Reserve in 1867 (i).

Conveyance of Troops by Railway.

Conveyance of troops by railway.

135. Shortly after the introduction of railways, provision was made with respect to the conveyance of troops by railroad. The first provision was made in 1842 (j) and required the directors of a railway company to permit, on the production of a route signed by the proper authorities, the conveyance of officers and soldiers of the army, marines, and militia, with their baggage, stores, arms, and ammunition, at the usual hours of starting, at such prices, or on such conditions as might be contracted for between the Secretary at War and the railway company. This enactment was strengthened

(a) 6 Geo. I, c. 3.

(b) 47 Geo. III, sess. 1, c. 32.

(c) A.A. 115.

(d) 39 Geo. III, c. 20, s. 46.

(e) 43 Geo. III, c. 20, s. 55.

(f) 47 Geo. III, sess. 1, c. 32, s. 60.

(g) 7 Geo. I, c. 6.

(h) 3 Geo. IV, c. 126, s. 32.

(i) 30 & 31 Vict. c. 110, s. 16; re-enacted by 45 & 46 Vict. c. 48, s. 23.

(j) 5 & 6 Vict. c. 58, s. 20.

in 1844 (a), when the companies were required to provide conveyance at fares not exceeding those mentioned in the Act, and a maximum of fares was also prescribed for the conveyance of public baggage, stores, ammunition (with an exception for gunpowder and explosives), and necessaries. These provisions were extended to the Army Reserve in 1867, and were re-enacted in 1883 (b) as regards the regular, reserve, and auxiliary forces as well as for naval forces. The Act of 1883 reduces the maximum fares and requires the provision of such description of carriages as are specified in the route, but provides that if the company loses the benefit conferred by the other provisions of the Act with respect to the exemption from passenger duty, they are to convey the forces and baggage on the same terms as if the Act had not passed.

186. In 1871 it was enacted that when Her Majesty by Order in Council declared that an emergency had arisen in which it was expedient for the public service that the Government should have control over the railroads in the United Kingdom, or any of them, the Secretary of State might empower any person to take possession of any railroad, and of the plant belonging thereto, and use the same for Her Majesty's service in such manner as the Secretary of State might direct. Full compensation must be paid to the persons whose railroad is taken possession of (c). The Secretary of State is, by the National Defence Act, 1888, authorised to claim precedence for traffic for military purposes over all railways whilst an order for the embodiment of the militia is in force (d). This Act, as well as the Act of 1871, extends also to tramways.

Power to take possession of railways in case of emergency.

(a) 7 & 8 Vict. c. 85, s. 12.

(b) 46 & 47 Vict. c. 34, s. 6.

(c) 34 & 35 Vict. c. 86, s. 18.

(d) 51 & 52 Vict. c. 31, s. 4.

CHAPTER X.

ENLISTMENT.

- | | |
|---|---|
| Object of chapter. | 1. A summary of the history of enlistment down to the year 1870 has been given in Chapter IX : it is proposed in this chapter to sketch the system in operation under existing Acts, and under the Recruiting Regulations, which give general instructions as to the appointment and duties of recruiting agents, the qualification of recruits, the mode of recruiting, and other matters. |
| Term of original enlistment. | 2. The provisions of the Army Enlistment Act, 1870, are re-enacted with slight modifications in the Army Act, so that the latter only need be noticed. A recruit is not to engage for more than 12 years, and may engage to serve the whole time with the colours, or part of the time with the colours and part in the Army Reserve (<i>a</i>). Enlistment for a term less than 12 years would, however, be legal, and any part of such term might be for service in the reserve (<i>b</i>). |
| Change of conditions of service. | 3. The Army Council, however, may allow a soldier, if he wishes, to go into the reserve at once, or to extend his army service (<i>i.e.</i> service with the colours) for any time up to the whole term of his original enlistment, or to extend the term of his original enlistment up to 12 years or any shorter period (<i>b</i>). |
| Re-engagement. | 4. The old term of 21 years is still retained ; as, subject to any regulations made by the Army Council, a soldier whilst serving with the colours may, after the expiration of 9 years from the date of his original enlistment, with the approval of the competent military authority (<i>c</i>), re-engage to serve for such a further period of army service as will make up a total of 21 years' continuous service (<i>d</i>). |
| Continuance in service after 21 years. | 5. Subject also to such regulations, a soldier who so re-engages may, at the end of the 21 years, with the approval of the competent military authority, continue to serve, with a right to his discharge 3 months after he claims it (<i>e</i>). If, however, he is serving abroad he is liable to serve for an additional year (<i>f</i>). |
| Regulations as to extension, re-engagement, &c. | 6. The ordinary period of colour service is at present 6, 7, or 8 years, and efficient soldiers of good character, if fit for service at home and abroad, are allowed under certain conditions to extend their service so as to complete 12 years with the colours (<i>g</i>). In a few instances enlistments for 2 or 3 years with the colours are permitted. |

The present regulations, however, restrict the re-engagement and continuance of service, as private soldiers cannot re-engage before completion of 11 years' service, and then only if thoroughly efficient

(*a*) Under the Reserve Forces Act, 1882.

(*b*) A.A., 76-78.

(*c*) For definition of the competent military authority, see A.A., 101 (1), 190 (32), and Rule 128 ; see also K.R., 264.

(*d*) A.A., 84. As to the conditions under which approval is authorised to be given, see K.R., 264 to 269.

(*e*) A.A., 85.

(*f*) A.A. 87 (1).

(*g*) K.R., 262.

to the satisfaction of the officer commanding ; and are only allowed in special cases, with the approval of the officer commanding, to continue their service beyond 21 years (a). **Ch. X.**

7. Under the same regulations, non-commissioned officers, if fit for service at home and abroad, are allowed, under certain conditions, and with the approval of the commanding officer, to extend their army service, so as to complete 12 years with the colours. Warrant officers and staff-serjeants and serjeants, after completing 9 years' service, and schoolmasters, after completing 11 years' service, have the right to re-engage, subject only to the veto of the General Officer Commanding-in-Chief. Other non-commissioned officers are in the same position as regards re-engagement as private soldiers. Regulations as to non-commissioned officers.

Non-commissioned officers may, with the approval of the commanding officer (who before approving must, with a few exceptions, obtain the consent of some superior authority), continue their service after 21 years, but have not the right to do so (b).

8. A soldier is liable to be detained in service for 12 months beyond the time at which he would otherwise be transferred to the reserve, or discharged, if a state of war exists, or if he is beyond the seas, or if the reserves are called out. A soldier who would otherwise be discharged may also agree with the competent military authority, while a state of war exists, to continue as a soldier during the war, or until the end of 3 months after he claims his discharge (c). The power of the Crown to discharge a soldier is noticed below. Power in certain circumstances to detain soldier after expiration of his term.

In case of imminent national danger or great emergency, when the reserves can be called out for permanent service by the King's proclamation, a like proclamation can require men who would otherwise be transferred to the reserve to continue in army service : these men are then in the same position as if they had been transferred to the reserve and called out on permanent service (d).

9. The Acts of 1847 and 1867 and 1870 adopted, in reckoning the years of a soldier's service, the principle of omitting those periods during which he had not given the service which he had agreed upon enlistment to give, e.g., by having been in prison, or by reason of desertion, or absence without leave. After 1870, the effect of applying this principle to men liable under their enlistment to enter the reserve, was to protract the time before a soldier's entry into the reserve, but not the term of his liability to service in the reserve. It kept with the colours inferior men whose places might otherwise have been filled by good recruits. Forfeiture of service under former Acts.

10. The Army Act, therefore, abandons this principle, and does not, because a man is a bad soldier and constantly under sentence, require him to serve longer, but allows him to be discharged or sent into the reserve at the usual time. On the other hand, it provides that a soldier guilty of desertion or fraudulent enlistment shall, if serving on his original engagement, forfeit, not only the time of his absence, but all his service prior to his conviction, and be liable to serve as if he had been attested at the date of his conviction, or of the order dispensing with his trial in the case of confession. If serving on a re-engagement a soldier convicted of desertion or fraudulent enlistment, by court-martial, or whose trial has been dispensed with forfeits all previous service rendered during the Provisions of Army Act as to forfeiture of service.

(a) K.R., 262, 264, and 270-272.

(b) See A.A., 86 ; K.R., 262, 264, 270, 272, to which reference must be made for details.

(c) A.A., 87, 88, also 77.

(d) A.A., 88. See Reserve Forces Act, 1882, ss. 12, 14.

Ch. X. period of such re-engagement, *i.e.*, from the day following that on which he completed 12 years, service (a); the term of any imprisonment or detention to which he is sentenced will reckon as part of his service after the date of the sentence. The Army Council, however, have power to restore all or any part of any service forfeited (b).

Effect of provisions.

11. This forfeiture, coupled with the provision as to the liability of a soldier convicted of the above offences to general service, will enable a man who has committed them to be sent to serve abroad, or in some other sphere where, by reason of greater activity or otherwise, he will be removed from the class of temptation under which he may have committed the offence. For, however serious the above offences are in a military sense, they are often committed, not from any want of moral character or any reluctance to serve, but from some discontent, or from association with bad companions, or from some sudden or special temptation inducing the man to absent himself.

Enlistment for general service and appointment to corps.

12. A man may, since 1870, under the Recruiting Regulations, be engaged for service in any particular corps, but otherwise he is enlisted for general service or general service (infantry), or general service (cavalry), and, if enlisted for general service, or general service (infantry), or general service (cavalry), he is, under the present law, to be appointed, as soon as practicable, to some corps, or some corps of those arms of the service, but may be transferred, within three months of his attestation, to any other corps of the same arm or branch of the service (c).

Power to transfer under former Acts.

13. The power to transfer used formerly to be exercised in such a manner as to make it oppressive and much dreaded by the soldier. The Mutiny Act in 1765 expressly authorised courts-martial to sentence deserters to be transferred for service in foreign parts; but subsequently transfer, except by consent or as a punishment, was abandoned.

Provisions of Army Act as to transfer.

14. At present, when once a soldier is appointed to a corps for which he enlisted (or, if he enlisted for general service, has served for three months in a corps to which he has been appointed), he may make it his home so long as he serves with the colours, provided he conducts himself fairly well, and is qualified to serve in the place in which his corps is ordered to serve. He may be transferred, however, to another corps with his own consent, or compulsorily. The compulsory transfer may be either—(1) for the purpose of retaining him in a place when his corps removes; or (2) as a punishment.

By consent.

15. It may happen that a man who is appointed to the cavalry may, with advantage, be transferred to the infantry, if he is unable to learn to ride; while a man may be transferred to another corps for the purpose of serving with a brother. These cases would be with his consent.

From regiment ordered abroad from home, or vice versa.

16. When a soldier has been invalided from abroad, or his battalion is ordered abroad, and he is unfit to serve abroad, or will, within two years, go into the reserve, or be discharged, he can, if he does not go into the reserve at once, be transferred compulsorily to a corps of the same branch of the service in the United Kingdom or to the reserve. Similarly, when a regiment or battalion abroad is ordered home or to another station, a soldier who has (in addition to his reserve service) two years' army service to run under his original enlistment, may, for the purpose of serving abroad the

(a) A.A., 84.

(b) A.A., 73, 79. See further as to restoration of Service, K.R., 273.

(c) A.A., 83 (1).

residue of his army service, be transferred compulsorily to another corps of the same branch. **Ch. X.**

17. A soldier who has been guilty of desertion or fraudulent enlistment, or has been sentenced by a court-martial to not less than three months' detention, may have his punishment wholly or partly commuted into a liability to general service, and he may then be transferred from time to time to any corps. This power may well be exercised in cases where a soldier gets into trouble in the United Kingdom and there is a prospect of his being converted into a good soldier by being sent abroad (a). A soldier committed as a deserter by a civil magistrate in any part of His Majesty's dominions may be transferred compulsorily to a corps near the place where he is committed, or to any other corps if the competent military authority direct, but this power need not often be exercised (b). **As a punishment.**

18. The enlistment of the soldier is a species of contract between the Sovereign and the soldier, and under the ordinary principles of law cannot be altered without the consent of both parties. The result is that the conditions laid down in the Act under which a man was enlisted, cannot be varied without his consent. A soldier, however, who has enlisted under one Act, and re-engaged under another, has thereby consented to place himself under the Act under which he re-engaged. So also has a soldier who has given notice to continue his service, though until the passing of the Army Act he had been assumed to remain under the Act to which he was subject at the time when he gave the notice (c). **Conditions of enlistment not varied without consent of soldier. 30 & 31 Vict., c. 24. 33 & 34 Vict., c. 67.**

19. The above principle was recognised in 1879, as the Army Discipline and Regulation (Commencement) Act of that year provided that the Army Discipline and Regulation Act, 1879, should not affect the position of a soldier, without his consent, as regards the term of his service, or his liability to forfeit his service or to be transferred to another corps. **Application of Army Act to soldiers enlisted under former Acts.**

20. The liability to general service on conviction for desertion or fraudulent enlistment was extended to old soldiers, because it is a mitigation of punishment for an offence; but the power to transfer soldiers given by sub-sections (4) and (5) of section 83 did not apply to any soldier who enlisted between the 19th of June, 1867, and the 9th of August, 1870, if he had not re-engaged. A soldier who re-engaged after the commencement of the Army Discipline and Regulation Act, 1879, became, on the principles before mentioned, subject to the whole of Part II of the Army Act; and a soldier who extended his army service, or who gave notice to continue his service after the commencement of the Army Act, is also deemed to have consented to the application to him of the whole of Part II of that Act. **Further observations on application of Army Act.**

21. Since 1694 (d) a soldier has been required to be attested before some civil authority (e) as a mode of protecting him against being entrapped, without understanding the nature of it, into a contract, which, even though not a contract for life, is one of a very serious nature. Attestation was also adopted as a protection from impressment (f). The practice which exists in many parts of the country **Attestation before civil authority required since 1694.**

(a) See above, para. 11, and A.A., 83 (7).

(b) As to transfer generally, see A.A., 83, K.R., 323-334; and as to competent military authority, A.A., 101 (1), and R.P. 128.

(c) The effect of these provisions is to bring all soldiers now serving under the Act of 1881, as any soldier enlisted under a previous Act and now serving must have either re-engaged or continued his service under the Act of 1881.

(d) 5 & 6 Will. & Mar., c. 15, s. 2, quoted in Clode, Mil. Forces, ii. p. 7.

(e) See, however, as to attestation before officers, para. 22 (*ad fin.*).

(f) The Secretary at War used to discharge soldiers improperly enlisted. See Clode, Mil. Forces, ii. p. 8. The King's Bench discharged soldiers improperly impressed, *R. v. Aeset*, Burrow's Rep. 637. See Clode, Mil. Forces, ii. p. 587.

Ch. X.

of concluding a bargain by giving some earnest of it, was adopted in the case of enlistment by the giving of the shilling, and formerly the acceptance of the shilling, rendered the man for some purposes a soldier (a).

Provisions
of Army
Act as to
attestation.

22. Under the Army Act, the acceptance of the shilling has no such effect. A man offering to enlist receives a notice informing him of the general conditions of service in the army, and of the requirements of attestation, and directing his appearance before a justice (b). If he fails to appear he has merely broken his bargain; he cannot be arrested as a criminal; and on appearing before the justice he may object to enlist, and if so cannot be required to pay any smart money. If he appears before the justice and takes the oath, he becomes an attested soldier, but he will still be able to procure his discharge within three months by paying a sum which is not to exceed, and is at present fixed at, ten pounds. The attestation consists in appearing before the justice, answering certain questions, which are recorded, and making and signing a declaration as to the truth of those answers, and taking the oath of allegiance (c). Thereupon he becomes for all purposes a soldier, and any invalidity in the attestation can only be taken advantage of within three months afterwards. Any immaterial error in the attestation paper can be amended at any subsequent time by a justice (d). Officers are empowered to act as justices for the purpose of attesting recruits for the regular forces, if authorised by the regulations of the Army Council. The persons who in India, the colonies, and foreign countries have authority to attest recruits, are enumerated in s. 94 of the Army Act.

Evidence of
attestation.

23. The attestation paper is signed in duplicate, so that the original may be kept at home and the duplicate follow the man wherever serving (e). This practice renders less important the provisions of the Army Act (s. 163) for proof of enlistment by a certified copy of the attestation paper, which prevent a prosecution for desertion abroad failing by reason of the attestation paper being at home. The same section makes an attestation paper evidence of the soldier having given the answers set out in it, a provision useful in case of a prosecution for making a false answer; in which case an attestation paper alone, and not a copy, is evidence.

Acceptance
of pay
renders a
soldier sub-
ject to
military
law, though
not
attested.

24. Notwithstanding the provisions for protecting persons from being entrapped into being soldiers, it has always been the law that a man in pay as a soldier is subject to military law, though not attested. This law is still maintained, because if a man chooses to serve and take pay as a soldier, he must be considered to have accepted the conditions under which he is paid and treated as a soldier, and therefore to be subject to military law. Even an alien who enlists by making a false answer would apparently come under the same rule. The Act, however, provides that a man in such a

(a) The acceptance of the shilling was treated as an agreement by the man to enlist, and either to complete his enlistment by attestation before a justice, or, in default, to pay smart money, which latterly amounted to 20s. Enactments were made for giving him notice of what he was about to agree to, and for the lapse of a certain time between his receipt of the shilling and notice, and his final attestation before the justice. On the other hand, if he absconded between his acceptance of the shilling and his appearance before the justice, he was liable to be apprehended as a vagabond, and punished accordingly, and also to be compulsorily attested as a soldier.

(b) For persons included in the term "justice" for the purpose of enlistment, see A.A., 94.

(c) As to the form of oath and the validity of enlistment without it, see Clode, *Mil. Forces*, ii. 21.

(d) A.A., 80, 81, 100.

(e) K.R., 1906-1911.

position may claim his discharge at any time, and the commanding officer is to forward the claim to the competent military authority for submission to the Army Council; but the man, until discharged, has no right to absent himself, and is liable in all respects to be treated as a soldier. This provision as to discharge will not apply to a soldier who has gone through the form of attestation, but whose attestation is illegal, because after three months no advantage can be taken of any invalidity in the attestation (a).

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25. If an apprentice in the United Kingdom, who was bound when under sixteen by a regular indenture for at least four years, enlists while still under twenty-one, he can be claimed by his master, through a proceeding before justices, but not otherwise. An apprentice who is so claimed is not liable afterwards to serve under his enlistment. The claim must be made within one month after the apprentice left his master's service. The apprentice is liable to, and on demand of his commanding officer must, be tried by the justice before whom the proceeding is taken for the offence of making a false statement on his attestation. With the above exception, and a similar one for indentured labourers in the colonies, a master cannot claim his servant who has enlisted (b).

Enlistment of apprentices.

26. An enlistment is a valid contract, although entered into by a person under twenty-one, who by the ordinary rules of law, except where modified by statute, cannot, as a general rule, contract any engagement (c).

Of minors.

27. Though the Act of Settlement (d) which prohibits aliens holding any office, civil or military, does not in terms apply to soldiers, and though there was no statutory prohibition of the enlistment of foreigners, it seems to have been considered that the Crown had no authority either to enlist aliens for service in the United Kingdom, and consequently to punish them for desertion, or to billet them when in this country (e).

Of aliens. Act of Settlement.

28. Statutory power was therefore taken in 1757, and again in 1782, to quarter foreign troops in this kingdom (f), and in 1794 and in subsequent years statutory power was taken by the Crown to enlist aliens, even though they were to serve abroad (g). This was subject to the conditions that they were not to be brought into the United Kingdom, except with a view to operations abroad; that if so brought they were not to go more than five miles from the sea coast, and that there were never to be more than 5,000 men in the kingdom. A similar provision was made in 1800 (h), and during the Crimean War in 1854 (i), but in the latter case the only restrictions were that the number of men brought into the United Kingdom was not to exceed 10,000, and that they were not to be billeted. The illegality of the enlistment of aliens has also been recognised in other Acts (j), till at last, in 1837, it was enacted that, with the

Limited power to enlist aliens.

(a) A.A., 100.

(b) A.A., 96, 97.

(c) See cases cited in Clode, *Mil. Forces*, II. p. 34, *R. v. Rotherfield Greys*, 1 B. & C., pp. 349, 350. See also *R. v. Hardwick*, 5 B. & Ald. 176.

(d) 12 & 13 Will. III, c. 2, s. 3. An officer does, but a private does not, hold an office.

(e) Clode, *Mil. Forces*, I. pp. 89, 90, 487; II. pp. 35, 431-435. Foreign troops seem to have been received in or brought into the kingdom in the time of Anne and Geo. I. Report on recruiting, 1867, Parl. P., 215.

(f) See 30 Geo. II, c. 2; 22 Geo. III, c. 26.

(g) See 34 Geo. III, c. 43. The Act 29 Geo. II, c. 5, recited the enlistment of foreigners in America, and gave power to commission them, but not to enlist. This was given by the amending Act, 38 Geo. III, c. 13.

(h) 39 & 40 Geo. III, c. 100.

(i) 18 & 19 Vict. c. 2.

(j) See 44 Geo. III, c. 75; and 46 Geo. III, c. 23, continued by 55 Geo. III, c. 85. See also the provisions on the amalgamation of the Indian Army, 24 & 25 Vict. c. 74, s. 2.

Ch. X. permission of the Crown (given in each case), an alien might be enlisted, but the number of aliens in any corps was not to exceed the proportion of one to every fifty natural-born subjects, and this provision has been re-enacted in the Army Act (a). An alien so enlisted is by the Army Act made incapable of becoming an officer. A relaxation in favour of negroes and persons of colour was originally made in consequence of negroes captured in slavers being taken into the service of the Crown, and has been continued to legalise the recruiting of natives on the West Coast of Africa for service in the West India regiments and of Lascars in the East; and the relaxation has recently been extended to inhabitants of British protectorates in order to enable troops raised in the East and West African protectorates to serve outside their boundaries (b). It must also be recollected that under the Naturalization Act, 1870, a naturalized alien has the same privileges as a British subject, and therefore is capable of being enlisted to serve His Majesty.

23 & 34
Vict., c. 14.

Discharge.
Power of
Crown to
discharge
soldiers.

29. The terms of the enlistment of a soldier, since he has been enlisted directly by the Crown, have always been to serve the Sovereign so long as his services are required, within the period for which he agrees to serve; consequently the Sovereign has always had power to discharge soldiers. But a soldier cannot be discharged except by order of the Sovereign or under some statutory power, such as the sentence of a court-martial, to which is added in the Army Act, an "order of the competent military authority" (c).

Certificate
of dis-
charge.

30. A soldier on his discharge is entitled to receive a certificate of discharge, so as to show that he is properly discharged and is not a deserter. He receives a certificate of discharge and a certificate of character, which show respectively the cause of discharge, his conduct and character. Until he is duly discharged he remains subject to military law. Discharge has been at different times regarded as a reward or as a punishment (d). When the service was for life, discharge was in many cases the highest object of a soldier's desires, and even now in a time of scarcity of labour and consequent high wages it may be a material advantage to him. There is no reference in the present law to discharge as a reward. On the other hand, discharge with ignominy, or discharge towards the end of a man's service shortly before he becomes entitled to receive pension, cannot but have the effect of a punishment.

Conveyance
home of
soldiers on
discharge.

31. A soldier enlisted in the United Kingdom is entitled if, on the completion of his service, he is abroad, to be sent to the United Kingdom, free of expense, for his discharge; and a soldier enlisted in the United Kingdom, and discharged there, is entitled to be sent free of expense from the place where he is discharged to the place where he was attested, or to his residence, if his conveyance there costs no more (e). In no other case has a soldier any statutory right to be sent free of expense to any place on discharge, though, in some cases, he may be allowed a free conveyance as a matter of favour (f).

(a) 7 Will. IV & 1 Vict. c. 29; A.A., 95 (1).

(b) A.A., 95.

(c) A.A., 92. For definition of the competent military authority, see A.A., 101 (1), 190 (32), also, R.P. 128. For regulations as to discharge, see K.R., 377-414.

(d) See Clode, *Mil. Forces* II. pp. 43-47.

(e) A.A., 90. The old provisions enabling discharged soldiers and the wives and children of soldiers ordered abroad to obtain from a justice of the peace or mayor a certificate entitling them to beg their way home have been repealed.

(f) See Allowance Regulations, Sec. 12, II. 6, for the present practice.

32. If a soldier is a lunatic, the Army Council or an officer deputed by them may, on his discharge, send him and also his wife and child, to the workhouse of the parish or union to which he is chargeable, and if he is a dangerous lunatic may send him to the lunatic asylum for lunatics chargeable to that parish or union (a). Ch. X.
Disposition of lunatic soldiers.

33. The only power, except with the soldier's consent, of sending him into the reserve before the stipulated time is on occasion of his being unfit to serve abroad, or of his regiment being ordered abroad shortly before the expiration of the time of his service with the colours (b). A soldier who is transferred to the Army Reserve is entitled, on transfer, to free conveyance to his place of attestation or selected place of residence (if not involving greater cost) in the United Kingdom, but has no claim to free conveyance to any place on final discharge from the army after completing his service in the reserve (c). Transfer to reserve.

34. Offences in relation to enlistment, when committed by persons who are at the time or thereafter become subject to military law, are punishable by military law under ss. 13, 32-34 of the Army Act. A man renders himself liable to punishment not exceeding imprisonment who, after being discharged with ignominy, or for misconduct, or on account of conviction for felony or a sentence of penal servitude, or dismissed with disgrace from the Navy, enlists without disclosing the circumstances of his discharge or dismissal. Offences in relation to enlistment.

A recruiter who enlists any man whom he has reason to believe to have been so discharged or dismissed, also renders himself liable to imprisonment.

The making of a false answer to any question on attestation renders the offender liable to imprisonment on the sentence either of a civil court of summary jurisdiction for the place where the offence was committed, or where the offender may happen to be, or of a court-martial (d); and any person who uses, or gives for use, for the purposes of enlistment a false statement as to character or previous employment is liable on summary conviction to a fine not exceeding twenty pounds (e).

No one may enlist soldiers unless duly authorised, and any person who does so is liable to a fine not exceeding twenty pounds (f).

A man who, while belonging to one corps, enlists in the same or any other corps, is guilty of fraudulent enlistment, and can be punished for it; but as he has made two engagements he can be held to either engagement, and is thus liable to serve, as the military authorities direct, in accordance with the terms of his original attestation, or those of his new attestation, and (unless he has enlisted in the corps to which he already belongs) in either of the corps to which he has been appointed to serve (g).

(a) A.A., 91. See also K.R. 403-410.

(b) A.A., 89.

(c) A.A., 90. For the further benefits in this respect now enjoyed by reservists, see Allowance Regulations, sec. 12. II. 6.

(d) A.A., 99, 33, and Notes.

(e) Seamen's and Soldiers' False Characters Act, 1906, (6 Edw. 7, c. 5), s. 2.

(f) A.A., 98. Under the Mutiny Act, authority was in terms granted to consuls and other persons abroad to enlist soldiers; but the present Act makes it clear that those officers have only power, like the justices at home, to attest, and have no power to act otherwise in recruiting unless specially authorised to do so. See A.A. 94.

(g) For details see K.R., 522.

CHAPTER XI.

CONSTITUTION OF THE MILITARY FORCES OF THE CROWN.

Military
forces.

1. The military forces of the Crown consist of—

British forces ;
Indian forces ;
Colonial forces.

Indian forces.

Observa-
tions on
Indian
forces.

2. The Indian forces consist of regiments permanently stationed in India, and formed almost entirely from natives of India. The officers and men of these forces, who are natives of India, are subject to the Indian Army Act, 1911, or previous Acts which it has superseded, wherever they are serving, and are only to a limited extent subject to the Army Act (a). Besides the natives of India there are Europeans serving as officers, and persons of certain degrees of European descent serving as non-commissioned officers, hospital apprentices, or otherwise, who, though forming part of the Indian forces, are subject to British and not to Indian military law. The enlistment of Europeans for these forces, except for medical or other special service, is prohibited (b). Commissions on the unattached list for appointment to the Indian Army may be given to cadets who have passed through Sandhurst. If it is required to supplement this direct supply, officers of British units serving in India are transferred permanently to the Indian Army if qualified according to the regulations for the time being in force. Officers are employed, according as the Government of India may direct, in any military or civil employment, irrespective of their ranks in the Indian Army. Such officers, while holding civil employments, cannot assume a military command, but continue to receive promotion in military rank in the ordinary course; and on accepting any military appointment they are entitled to take military command (c).

Colonial forces.

Observa-
tions on
Colonial
forces.

3. The Colonial forces are of two classes, namely, the forces raised by the government of a colony, and the forces raised in a colony by direct order of His Majesty to serve as auxiliary to, and in fact to form part for the time being of, the regular forces. The first class of Colonial forces—those raised by the government of a colony—are only subject to the Army Act when so provided by the law of the colony and when serving with part of His

(a) A.A. 180. The expression "Natives of India," for the purposes of the Army Act and of this chapter, means all persons belonging to His Majesty's Indian Army, who are triable by Indian and not by English military law.

(b) 23 & 24 Vict. c. 100; A.A. 180 (2) (b) and note.

(c) Royal Warrant of 16 January, 1868, as amended.

Majesty's regular forces, and then only so far as the colonial law has not provided for their government and discipline, and subject to the exceptions specified in the general orders of the general officer commanding the forces with which they are serving. The Army Act, however (s. 177), provides that the colonial law may extend to the forces, although beyond the limits of the colony where they are raised.

The second class of Colonial forces—of which the West India regiment, the Royal Malta Artillery, the West African regiment, the non-Europeans of the Fortress Companies, Royal Engineers, at Hong Kong and Sierra Leone, and the Hong Kong Singapore battalion Royal Garrison Artillery, are examples—is referred to by ss. 175 (4) and 176 (3) of the Army Act. Their pay and maintenance are voted annually by the Imperial Parliament, and they are in fact Imperial forces although serving in a colony. The Royal Malta Artillery (before 1889 styled the Malta Fencible Artillery) are declared by the Army Act to be part of the regular forces, while the others are included in the regular forces by the Royal Warrant defining "Corps": but see s. 176 and note. The men composing the Hong Kong Singapore battalion Royal Garrison Artillery, the West India regiment and the West African Regiment are in fact enlisted to serve in any part of the world. A man enlists in the Royal Malta Artillery for service in Malta and its dependencies alone.

British Forces.

4. The British forces require a longer notice. They consist— British forces.
 - (1) Of the Army commonly so-called, including the Reserves;
 - (2) Of the Marines.
5. The Army commonly so-called consists of—
 - (1) Cavalry, composed of four corps for the purpose of enlistment (a), and divided into thirty-one regiments; there are also fifty-four regiments of Yeomanry of the Territorial Force and the Territorial Force Reserve. Constitution of "Army" in common acceptance of term.
 - (2) The Royal Regiment of Artillery, of which the mounted and dismounted branches are divided into two corps, named respectively:—(i) The Royal Horse Artillery and the Royal Field Artillery, to which is affiliated the Royal Field Reserve Artillery and the units of Royal Horse and Royal Field Artillery of the Territorial Force (including two Horse Artillery Batteries of the Honourable Artillery Company) and the Territorial Force Reserve; (ii) the Royal Garrison Artillery (which includes Mountain artillery and the Royal Artillery Clerks' section), to which are affiliated the Antrim and the Cork Royal Garrison Artillery Special Reserve, and the units of the Royal Garrison Artillery Territorial Force and its reserve.
 - (3) The corps of Royal Engineers, divided into squadrons, troops and companies (b).
 - (4) The Royal Flying Corps (Military wing) (c) with its reserve.
 - (5) Infantry, composed of four regiments of foot-guards and 69 territorial regiments. Each territorial regiment includes two or more line battalions, one or more

(a) The corps of Household Cavalry, and the corps of Dragoons, Lancers, and Husars, of the line.

(b) The units of the Royal Engineer Special Reserve, and of the Territorial Force and its reserve, also form part of the corps of Royal Engineers.

(c) Formed under the Royal Warrant of 13th April, 1912. (S.A.O. of 15.4.12.)

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battalions of the Special Reserve, and of the Territorial Force and the Territorial Force Reserve. (a)

There are also certain infantry and cyclist battalions of the Territorial Force (including the half battalion of infantry included in the Honourable Artillery Company) not included in any regular regiment.

- (6) The Army Service Corps, which is sub-divided into the Transport, Supply, Remount, and Mechanical Transport sections, affiliated to which are the Army Service Corps Special Reserve and the units of the Army Service Corps Territorial Force and its Reserve.
- (7) The Royal Army Medical Corps, to which are affiliated the Royal Army Medical Corps Special Reserve, and the units of the Royal Army Medical Corps Territorial Force and its Reserve.
- (8) The Army Veterinary Corps, to which are affiliated the Army Veterinary Corps Special Reserve, and the Army Veterinary Corps Territorial Force and its Reserve.

Departmental corps.

6. In addition there are the general reserve of officers, the special reserve of officers, and, finally, certain departmental corps (b), namely, the Army Ordnance Corps, Army Pay Corps, Band of the Royal Military College, Corps of the School of Musketry, Corps of Army School-masters, Corps of Military Police (Mounted and Foot), and Military Provost Staff Corps. The duties of these departmental corps are sufficiently indicated by their names. Each of them is a corps for the purposes of the Army Act, though the appointment, enlistment, and transfer of officers and men is not regulated quite in the same way as in the case of the territorial regiments; and in connection with some of the above corps civilians are employed who are not subject to military law.

Other departments connected with the Army.

7. Further, it is necessary to mention various departments connected with the army, which are not corps within the meaning of the Army Act. These are the Army Pay Department, Army Chaplains' Department, Staff for Royal Engineer Services, Army Ordnance Department, Queen Alexandra's Imperial Military Nursing Service and the Territorial Force Nursing Service. They are not technically corps within the meaning of the Army Act, inasmuch as they are not declared to be so by Royal Warrant. If, however, any soldiers subject to military law were added to the above departments, they would be a "portion of His Majesty's regular forces employed on some service," and therefore be a corps within the meaning of the Army Act (c).

8. Supplementary to the army, but without definite liability for service unless otherwise undertaken, are—

The Royal Military College, the Royal Military Academy, the Duke of York's Royal Military School, the Royal Hibernian Military School, and the Queen Victoria School.

The Officers Training Corps.

The National Reserve.

Such categories of the Technical Reserve as are sanctioned by, and are raised under, the authority of the Army Council.

Officially recognised Cadet units.

(a) Two regiments of Foot Guards have three battalions each, one regiment has two battalions, and one has one battalion; and each of five other regiments—the Royal Fusiliers, the Worcestershire Regiment, the Middlesex Regiment, the King's Royal Rifle Corps, and the Prince Consort's Own Rifle Brigade—contains four battalions of regulars. Each of those regiments not particularly referred to, have two battalions of regulars. Each of the above regiments, and each branch of the Royal Artillery, and also the Royal Engineers, Army Service Corps, and Royal Army Medical Corps, is a separate corps for the purposes of enlistment and other purposes of the Army Act.

(b) Royal Warrant, 31st March, 1908. As to precedence, K.R., 1765.

(c) A.A., 190 (15) (A) (iv.).

9. For the purposes of enlistment and service, the unit in the army (in the Army Act referred to by the common name of "corps") is one of the above regiments or corps. A soldier, on his enlistment, is appointed to a corps, and is bound to serve in any part of it; and may belong for the whole of his military life to the corps to which he is first appointed. The officers are also appointed to these corps, but are all alike officers of His Majesty's land forces, and have army rank as such, which may or may not be the same as their regimental rank, that is to say, the rank in the above unit. They are consequently legally liable to serve with any portion of the army, if so ordered, and not merely with the unit to which they may be appointed; though in practice they are not required to do so. An officer has no right to resign his commission at all times and in any circumstances whenever he pleases. This was decided long ago in the case of officers serving the East India Company, and more recently in the case of a naval officer who, having been refused leave to resign, sent in his resignation, and quitted the service while abroad in order to take up a civil appointment at home (a). Exactly the same principles are applicable to commissions in the army.

Ch. XI.
Unit of
army for
enlistment
and service
is the corps.

10. The unit for purposes of discipline and some purposes of administration is not necessarily the same as the above unit. In the case of infantry, for instance, the unit for purposes of discipline is *prima facie* one battalion. If, however, part of the battalion is serving detached from the rest, that part becomes the unit for purposes of discipline, while for many purposes of administration it remains part of the battalion; at the same time all men in a battalion are liable to be ordered to serve in any other part of the corps, whereas they cannot be transferred to any other corps without their consent or except as a punishment for certain offences, or in special cases provided for by the Army Act (b).

Unit for
other pur-
poses not
necessarily
the same.

11. Throughout the Army Act the "commanding officer" is referred to for many purposes, and particularly for the purposes of investigating charges and awarding summary and minor punishments. The Act does not define the term "commanding officer." The Rules of Procedure contain a definition, for the purposes of all the rules and also for the purpose of the sections of the Act relating to "Courts-martial," to the "Execution of sentences," and to the "Power of Commanding Officer" (c). In cases to which this definition does not apply, it must depend on the custom of the service and the King's Regulations, as to who is, in any given circumstances, the commanding officer for a particular purpose.

Explana-
tion of term
"command-
ing officer."

Reserve of Officers.

12. A combatant officer of the regular forces who retires on retired pay or with gratuity becomes an officer of the Reserve of Officers, and is liable to be recalled to Army Service until he reaches the age shown below:—

Reserve of
Officers.

If he retired as a Captain or Lieutenant, up to the age of 50.
" " " Colonel, Lieutenant-Colonel, Major, Quarter-
master or Riding-master, up to the age of 55.
" " " General Officer, until the age of 67.

Compul-
sory.

(a) *Parker v. Lord Clive*, 4 Burr. 2419; *Vertue v. Lord Clive*, 4 Burr. 2472; and *R. v. Cuming*, E. p. Hall, L. R. 19 Q. B. D. 13, *Hearson v. Churchill*, L. R. [1892] 2 Q. B. 144. See also the dictum of Cockburn, C. J., in *Ex parte Trenchard*, L. R. 9 Q. B. 406. Clode, Mil. Forces, II, p. 96. Command formerly depended on the commission, but is now the subject of regulation. A. A. 71, see K.R. 217-237.

(b) See Ch. X, paras. 14-17, and A. A. 83.

(c) See R.P. 129, and K.R. 456.

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A medical, veterinary or departmental officer is also liable to recall to Army Service until the age of 55.

Officers retiring under Indian regulations have not this liability to recall.

Voluntary.

13. A commission in the Reserve of Officers may also be held by an officer who has retired from the regular forces, the Special Reserve of Officers, the auxiliary forces; a gentleman who has served as an officer or cadet in the Officers' Training Corps and by certain other officers who have been granted temporary army rank for service in the field.

When subject to recall.

14. These officers are subject to recall to Army Service in a time of national emergency, and become subject to military law in the circumstances mentioned in s. 175 (10) of the Army Act.

Special Reserve of Officers.

15. The Special Reserve of Officers is a branch of the Reserve of Officers established by Royal Warrant (a). This Reserve of Officers is designed to ensure that all units, services and departments of the regular forces shall be complete in officers on mobilization; to make good the wastage which will occur in the regular forces in war, and to provide officers for special reserve units. Militia officers received commissions in this reserve when the militia was transferred to the Special Reserve in 1908 (b).

Commissions in the Special Reserve of Officers are given to qualified candidates who are natural born or naturalised British subjects of pure European descent.

How borne on strength.

16. In the Cavalry, Royal Field and Garrison Artillery, Royal Engineers, Postal Section, Motor Cyclist Section, Foot Guards, Army Service Corps, Royal Army Medical Corps and Army Veterinary Corps such officers are borne supplementary to those corps; in the North or South Irish Horse, King Edward's Horse (The King's Oversea Dominions Regiment), the Antrim or Cork R.G.A., the Royal Anglesey or Royal Monmouthshire Royal Engineers they are borne on the strength of those units, and in the infantry they are either borne on the strength of the Special Reserve battalion, or supplementary to a regiment.

Appointments.

17. Except in the case of candidates who have previously served in the regular army all appointments are made on probation in the rank of subaltern. During the period of probation an officer is usually attached to a regular unit, and if he is reported upon favourably and passes the required examination he is confirmed in his appointment.

Liabilities.

18. An officer is liable to undergo training, annually or otherwise, as may be prescribed for his branch of the service, as well as special courses of instruction. He is liable to be called up for Army Service at home or abroad either with his own unit or otherwise at a time of national danger or when a national emergency appears, in the opinion of the Army Council, to be imminent, and is subject to military law at all times (c).

Period of Service.

19. He is subject to the liabilities mentioned in para. 18 for one year from the date of completion of his probationary period (in the R.E. for 3 years) and, unless he has at least a month before the expiration of the year (or 3 years in the R.E.) notified his desire in writing to resign his commission, he is held to be subject to the liabilities for a further period of one year, and so on from year to year.

Outfit allowance and gratuity.

20. Except in the case of an officer who is a candidate for a commission in the regular forces, on being gazetted to a commission on probation, an outfit allowance of £40 is granted, provided the

(a) Dated 2nd April, 1908.

(b) T.R.F. Act, 1907, s. 24.

(c) A.A. 175, (10).

officer undertakes that, if he fails from any cause to complete 4 years' service from the date of joining irrespective of seconded service, he will refund one-fourth of the allowance for each year or portion of a year by which his service falls short of the 4 years. A captain or subaltern under the age of 35 (40 in R.A.M.C. or A.V.C.) is granted in arrear at the conclusion of each year's service, subsequent to the completion of his probationary period, a gratuity of £20 provided he fulfils certain conditions (a).

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21. When employed on military duty in peace or attending an authorized course of instruction, an officer is (with certain exceptions) granted the pay and allowances issuable under the Pay Warrant to an officer of the regular forces of the same rank and arm of the service (b).

Pay and allowances.

Reserves.

22. The Reserves have been treated above as part of what is commonly called the army, although they are really only part of the army when called out for active service. The Reserve Forces Acts provide for the formation of an Army Reserve and of a Militia Reserve, but enlistment for the Militia Reserve ceased after April, 1901 (c).

General nature of Reserve.

23. The Reserve Forces Act, 1882, authorises the keeping up of an Army Reserve containing two classes, each to consist of such numbers as may be from time to time provided by Parliament; the first class is liable to service either at home or abroad; the second class, if it were in existence, would be liable only to serve in the United Kingdom.

Army Reserves divided into two classes.

24. The Territorial and Reserve Forces Act authorised the conversion of militia units into units of the Special Reserve, and further authorised the enlistment of men who had not served in the regular forces into the first class of the Army Reserve as special reservists, while the Army Act gives authority for the enlistment as special reservists in certain cases of men who have been discharged from the regular forces (d).

Special Reserve.

25. The first class of the Army Reserve consists of three sections, A, B, and D, and the Special Reserve; Section D could not at first be called out for permanent service until the whole of Sections A and B had been called out, and was therefore known as the supplemental reserve, but this restriction no longer exists (e).

First class of Army Reserve.

26. Section A (f) consists of reservists of the R.A., R.E., Foot Guards, Infantry of the Line, A.S.C., and R.A.M.C. who engage at the time of their first transfer to the reserve to join that section, or are permitted to join that section from section B within the first six months of their transfer to the reserve, to complete in that section the residue of the period required to complete the first year of reserve service. No man is allowed to engage in this section unless his character on transfer to the reserve was not lower than "good," and unless he is pronounced to be medically fit. The number of men in the section is limited to 6,000, and preference is given to men who have served abroad over those who have only served at home. Men joining this section must agree in writing to the

Section A of first class.

(a) Spec. Res. Regs., 426, 418.

(b) Spec. Res. Regs., 411.

(c) Army Order 88 of 1901.

(d) A.A. 92 (3) 45 & 46 Vict., c. 48, s. 3.

(e) Army Reserve Regs., 1. 63 & 64 Vict. c. 42, s. 1; see p. 741, note (a), below. Section C was abolished in 1904, and the men in it transferred to Section B: A.O. 202 of 1904.

(f) Army Reserve Regs., 1. Section A as originally constituted was closed for enlistment after 1879, and consequently became extinct.

Ch. XI. conditions of service (a), and are enrolled therein on the date of their transfer to the reserve, or, if transferred from Section B, within six months from their first transfer to that section.

A reservist of Section A may revoke his engagement as such by giving three months' notice in writing to his commanding officer, if not required for permanent service during that period. On receiving his release, or on completing his engagement in Section A (which is limited to the 12 months immediately following transfer to the reserve, unless he is permitted to re-engage for a further period of one year), he reverts to Section B of the reserve under the terms of his Army attestation. If a reservist of Section A so misconducts himself as to make himself not immediately available for service, he is relegated to Section B (b).

**Section B of
first class.**

27. Section B consists of soldiers enlisted for short service, who, having completed their period of colour service, are transferred to the Army Reserve under the conditions of their enlistment, to complete the period for which they originally engaged. The usual conditions for short service men are seven years with the colours and five in the reserve.

Section B also includes men who revert to it from Section A ; and men the residue of whose term of colour service has been converted into service in the reserve.

The last mentioned class of men comprised in Section B includes soldiers whose conditions of service have been varied by the Army Council so as to allow them, instead of serving with the colours during their whole period of army service, to enter the reserve at once for the residue of the term of their original enlistment. They are transferred to the reserve, and placed in Section B. (c).

28. A soldier on transfer to the Army Reserve, receives a certificate of character, and, on quitting the Reserve, a certificate of discharge.

**Illustrations of
Sections A
and B.**

29. Some examples will make clearer the above explanations of Sections A and B of the Army Reserve. V, W, and X all enlist in the infantry for twelve years, of which seven years are to be in army service and five years in reserve service. V and W serve with the colours seven years and then pass into the Army Reserve. V engages to join Section A, and continues in it for twelve months or if allowed to re-engage in the section, for two years, from the date of his passing to the reserve, when he reverts to Section B for the remaining four or three years of his reserve service, and is then discharged. W serves five years in Section B and is then discharged. X, after serving three years with the colours, converts, with the sanction of the Army Council, the rest of his army service into reserve service, passes into Section B, and after nine years in it is discharged.

Section D.

30. Section D consists of men who, on the completion of their first period of engagement (when completed wholly with the colours, or partly with the colours and partly in Section B of the reserve), are enlisted or re-engaged to serve for a further period of four years in this section. Men discharged after 12 years' service may join the section provided that not more than 15 years have elapsed since the date of first attestation. In the case of the Infantry and Artillery Reserve, men who on discharge

(a) Army Reserve Regs. 7.

(b) Army Reserve Regs., 47.

(c) A.I., 78. K.R. 367, 368.

(d) A reservist serving in Section A belongs for the purpose of transfer to Section B.

after completing their first period of engagement received characters other than "bad" or "very bad" are eligible for service in this section of the reserve; but in the case of other arms only those are eligible whose character is at least "good."

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A man can be re-engaged, if he is in Section B of the reserve, within six months of the completion of his current engagement, and if he is with the colours, within the fortnight before his discharge, but in either case his service in Section D does not commence until his discharge. Re-engagement for a second period is not allowed except in the case of men possessing certain trade qualifications (a) such as farriers, saddlers, &c., and if their age exceeds 46 years, the re-engagement can only extend till they reach 50. A note of the man's enlistment or re-engagement (as the case may be) is entered on his discharge certificate, as well as on the original and duplicate (army) attestations, and on his discharge from Section D he receives a certificate of discharge, the form of which depends on whether he enlisted or re-engaged for Section D (b).

31. The second class of the Army Reserve consisted, besides men enrolled under former Acts, of men enlisted or enrolled from among—

Second class
of Army
Reserve.

- (a.) Chelsea out-pensioners, or Greenwich out-pensioners being ex-marines, and
- (b.) Men who had served full time in the army (c).

Both these divisions of the second class are extinct.

32. Men who enter the reserve, if they enter under the terms of their original enlistment, or on a variation of those terms, are transferred; and, if otherwise, are either enlisted or re-engaged, and may be enlisted or re-engaged for such term and in such manner as is fixed by regulations (d).

Entry by
transfer or
enlistment.

33. Army Reserve men are liable to be called out annually for training, for a time not exceeding twelve days or twenty drills, and may then be attached to a body of the regular or auxiliary forces (e).

Annual
training of
Army
Reserve
men.

34. They are also liable to be called out by a Secretary of State, or by the Lord Lieutenant in Ireland, to aid the civil power in the preservation of the public peace. The men residing in any town or district are liable to be called out for the same purpose by the officer commanding the town or district on the requisition in writing of a justice (f).

Calling out
in aid of
civil power.

35. Further, they are liable to be called out on permanent service, by proclamation of His Majesty in Council "in case of imminent national danger or of great emergency, the occasion being first communicated to Parliament, if Parliament be then sitting, or declared in Council and notified by the Proclamation "if Parliament be not then sitting" (g).

Liability to
permanent
service.

(a) Army Reserve Regs., 18.

(b) Army Reserve Regs., 28 A.

(c) Reserve Forces Act, 1882, s. 3.

(d) Reserve Forces Act, 1882, s. 4.

(e) Reserve Forces Act, 1882, s. 11. See also Instructions for the training and drill of the Army Reserve (Infantry) issued annually with Army Orders, generally in March or April.

(f) Reserve Forces Act, 1882, s. 5.

(g) Reserve Forces Act, 1882, s. 12. A.A., 88 (2). These words were substituted, in 1870, for "in case of actual invasion or imminent danger thereof, or in case a state of war exists between Her Majesty and any foreign power," and in consequence of the expiration of the five years for which men enrolled before the 9th of August, 1870, were enrolled, the words in the text now apply to all men in the Army Reserve. See Army Reserve Act, 1887, s. 10; Army Enlistment Act, 1870, ss. 5, 14.

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In addition to the above liability, reservists belonging to Section A are liable under Section 1 of the Reserve Forces and Militia Act, 1898, to be called out on permanent service during the period of their engagement in that section, whether it lasts for twelve months or for two years, if required for service outside the United Kingdom when warlike operations are in preparation or in progress. When so called out they are liable to serve with the colours for not more than twelve months. Should, however, any portion of the reserve be called out on permanent service under Section 12 of the Act of 1882, then reservists of Section A become liable to serve to the same extent as any other portion of the reserve which has been called out (a).

The calling out of Section A under the Act of 1898 does not require a proclamation by the King in Council, nor involve the meeting of Parliament, but any exercise of this power must be reported to Parliament as soon as may be (b).

Extent of
liability.

36. Every man, when called out, is liable to serve until His Majesty no longer requires his services; but not beyond his unexpired term of service in the reserve, with the addition of twelve months more if a state of war exists, or if he is on service beyond the seas, or if the men in the reserves are at the time called out, that is, if there is imminent national danger or great emergency. An Army Reserve man, when so called out, forms part of the Regular Forces, and may be appointed to any corps as a soldier, and transferred within three months afterwards to any other corps; but a man enlisted before the passing of the Reserve Forces Act, 1906, cannot be appointed or transferred to an arm or branch of the service other than that in which he previously served unless he consents (c).

Under the Army Reserve Regulations, a reserve man is not allowed to proceed as a settler to any foreign country, nor to India, Egypt, nor any Dominion, Colony or Protectorate without authority from the officer in charge records concerned (d), and is not allowed to quit the United Kingdom or proceed to sea without leave from his commanding officer (e). He is also duly to report himself and, if called on, to present himself for medical examination (f).

Re-entry on
Army
Service.

37. When so allowed by regulations an Army Reserve man can voluntarily re-enter on service with the colours for all or any part of the residue unexpired of the term of his original enlistment, or for any time not exceeding twelve years from the date of his original enlistment (g).

Constitu-
tion of
Special
Reserve.

Special Reserve.

38. As mentioned in para. 24, the units of Militia existing in 1908 in the United Kingdom, with the exception of 23 battalions of infantry which were disbanded, were converted into units of Special

(a) See para. 26 above; Army Reserve Regs., 43 and 44; T.R.F. Act, 1907, s. 32 (2).

(b) T.R.F. Act, 1907, s. 32 (1).

(c) Reserve Forces Act, 1882, s. 14; Reserve Forces Act, 1906 (6 Edw. VII, c. 11), s. 2. As, however, the notice paper given to recruits was not amended so as to show the liability to transfer to any corps until the 7th July, 1908, this liability is not held to apply to those enlisted before that date, and their consent would be necessary.

(d) The Reserve Forces Act, 1906, s. 1 (2), provides for the making of regulations under s. 20 of the Reserve Forces Act, 1882, prescribing the condition under which men belonging to the Reserve may reside out of the United Kingdom, and the conditions under which men may be enlisted (out of the United Kingdom) for the Reserve. Army Reserve Regs., paras. 74 to 77.

(e) Army Reserve Regs., 58 to 62.

(f) Army Reserve Regs., 21.

(g) A.A., 78 (2). Under existing regulations, a man cannot, under ordinary circumstances, re-enter on army service unless specially permitted to do so. K.R., 376; Army Reserve Regs., 24-27.

Reserve, and enlistments into the Special Reserve authorized. **Ch. XI.**
 Special reservists form part of the first class of the Army Reserve.

39. The Special Reserve comprises the following :—

Cavalry : the Irish Horse, consisting of two regiments, the North Composition.
 and the South Irish Horse, and the King Edward's Horse (The King's Oversea Dominions Regiment).

Artillery : the special reservists of the Royal Field Artillery who are not organised into units ; and the Antrim and the Cork Royal Garrison Artillery.

Engineers : the Royal Anglesey and Royal Monmouthshire Royal Engineers Special Reserve, the Postal Section, the Signal Section and the Motor Cyclist Section.

The Royal Flying Corps (Military Wing) Reserve.

Infantry : seventy-four Special Reserve battalions, and 27 extra Special Reserve battalions.

Special reservists of the Army Service Corps, Royal Army Medical Corps, and the Army Veterinary Corps.

40. The Special Reserve is divided into two sections, A and B, Sections and Categories.
 and for training and instruction into three categories, (a), (b) and (c).

41. Section A is limited to a strength of 4,000 (b). Those who Section A.
 elect to serve in it are liable to be called out on army service in any part of the world when warlike operations are in preparation or in progress. Any special reservist in category (a), (b) or (c) may, if accepted, assume the liability above mentioned and join Section A, but for the present, special reservists of the Royal Army Medical Corps are excluded (c). When so called out, men of this section form part of the regular forces.

A man of Section A is not liable to serve for more than 12 months in the army from the date of being called out unless, at the expiration of that period, some portion of the Special Reserve is in permanent service under the provisions of The Reserve Forces Act, 1882, s. 12.

The engagement to serve in this section can be revoked by the man giving three months' notice in writing to his Commanding Officer.

On receiving a formal release from his engagement, or on completing his term of engagement in this Section, a special reservist reverts to Section B under the terms of his attestation (d).

42. Section B consists of all special reservists other than those Section B.
 belonging to Section A.

Special reservists of this Section are liable to serve in any part of the world, but can only be called out on permanent service by Proclamation (e) in case of imminent national danger or of great emergency.

43. As stated in para. 40, the Special Reserve is divided into Category (a)
 three categories and it is desirable briefly to consider them here separately. Category (a) is composed of men enlisted direct for service in the Irish Horse, King Edward's Horse, the Royal Field Artillery, the Royal Garrison Artillery, the Royal Engineers, Infantry, Army Service Corps (except those enlisted as Mechanical

(a) Special Reserve Regs., 4, and see S.A.O's. of 26th March, 1912, 27th November, 1912, and A.O. 229 of 1913.

(b) T.R.F. Act, 1907, s. 32.

(c) See Note † on page 2, Special Reserve Regs.

(d) Special Reserve Regs., 138.

(e) Reserve Forces Act, 1882, s. 12.

Ch. XI. Transport Drivers (a) and Horse Transport Personnel (b), Royal Army Medical Corps and Army Veterinary Corps.

The term of service is six years, except in the case of men enlisted for the Irish Horse, for whom it is four years (c).

A man in this category is liable to be called out for army service—

- (i) For annual training, and for a special course or courses for a prescribed period which is not to exceed in the whole six months (d);
- (ii) In aid of the civil power;
- (iii) In case of imminent national danger or of great emergency, when the army reserve is called out (e).

Provided that a man in this category is within certain limits of age, varying from 35 to 45 years according to the arm of the service to which he belongs, (f) he may be re-engaged for a term of four years (g). He may re-engage either at the end of the last training of his current engagement, or at any subsequent period prior to the expiration of his engagement. He is not re-attested, but makes a declaration on A. F. B 65.

When promoted on active service a special reservist of this category retains his rank on demobilization; becoming, if necessary, supernumerary to the establishment until absorbed.

Men who change their permanent residence may be transferred to a special reserve unit of the same branch or arm of the service within the recruiting area in which they intend to reside, or, in the case of those belonging to the Army Service Corps and Royal Army Medical Corps, they may be moved from one training centre to another with the consent of the Officer in Charge of Records.

The discharge of a special reservist of category (a) is carried out on A.F., B. 59, the character awarded being noted on the third page of that form. The reservist receives a certificate of discharge on A.F., E. 527 (h).

When a special reservist of category (a) is attested for the regular army he is deemed to be discharged from the Special Reserve (i). If, for any reason, he is not retained in the Regular Forces, he must be re-enlisted as a special reservist if he wishes to serve again as such.

Before a special reservist of this category can enter the Royal Navy or enlist into the Royal Marines, he must purchase his discharge from the Special Reserve.

Category (b) 44. Category (b) is composed of men of the Territorial Force, who agree to accept the liability of the Special Reserve but are trained on conditions similar to the Territorial Force. A man in this category is liable to be called out on permanent service, and to be employed on service at home or abroad in case of imminent national danger or of great emergency, when the army reserve is called out on permanent service (j). When so called out, men in this category become in all respects soldiers of the Regular Forces. As soon as practicable after the conclusion of hostilities, they return to civil life, an order under T.R.F. Act, 1907, s. 30 (5), being issued.

(a) See Special A.O. of 29th March, 1912.

(b) See Special A.O. of 27th November, 1912.

(c) Recruiting Regs., 177.

(d) T.R.F. Act, 1907, s. 30 (2); Special Reserve Regs., 135.

(e) Reserve Forces Act, 1882, s. 12.

(f) Special Reserve Regs., 140.

(g) In the Irish Horse, the period of re-engagement is not less than one year or more than four years.

(h) Special Reserve Regs., 153.

(i) T.R.F. Act, 1907, s. 30 (6); Special Reserve Regs., 155.

(j) Reserve Forces Act, 1882, s. 12.

45. Men are enlisted for category (c), as may be authorized. **Ch. XI.**
At present this category consists of :—

Category (c)

- (i) Mechanical Transport Drivers for A.S.C. (a).
- (ii) Horse Transport Personnel for the A.S.C. (b).
- (iii) Royal Flying Corps (M.W.) Personnel (c).

They are enlisted for one year, and are permitted to re-engage for one year at a time. The limit of age for continuing in the service is 50 years.

They are not allowed to transfer to any other branch of the Special Reserve during their term of service.

Except when called out on mobilization they receive no pay or allowances, but in peace time they receive bounties, varying in amount in the case of the Horse Transport Personnel according to grade. On mobilization they receive Army rates of pay, except in the case of the Mechanical Transport Drivers who receive a fixed rate.

A man in this category may purchase his discharge on payment of a sum varying from £1 to £4, but is discharged in the ordinary manner on completing his term of engagement.

Marines.

46. On several occasions regiments appear to have been raised for service at sea, but it was formerly the practice for regiments of the land forces to be sent to serve on shipboard; and even as late as the present century certain regiments were more usually sent on this service than others.

47. The regiment now known as the Royal Marines was first raised in the year 1755, and consists of two divisions, the infantry and artillery. The artillery rank after the Royal Artillery; the infantry rank after the Royal Berkshire regiment (d). The men are liable to serve on board His Majesty's ships, and, when borne on the books of any of His Majesty's ships for such service are subject to the Naval Discipline Act, as if they were seamen of the Royal Navy. When not borne on the books of any of His Majesty's ships they are subject to the Army Act (e).

Regiment of Royal Marines raised in 1755.

48. The men are enlisted according to the procedure in Part II of the Army Act, except that the duration of their service is fixed, by Acts applying only to them, at a term of twelve years, with a power to re-engage for a further period of nine years, making up twenty-one years in the whole (f). The service of a Marine on a foreign station may be prolonged for two years; and a marine who desires to continue in the service after twenty-one years may give notice of his desire, and, with the approval of his commanding officer, may continue in the service, with a right to be discharged after the expiration of three months' notice. A marine, on the completion of his term of service abroad, is, like a soldier, entitled on his discharge to be sent home to England. A marine is not allowed to reckon towards completion of his engagement the time during which he is absent from his duty by reason of imprisonment, or desertion, or other specified circumstances (g).

Term of service, &c.

(a) S.A.O., 29th March, 1912.

(b) S.A.O., 27th November, 1912.

(c) A.O. 229 of 1913.

(d) Clode, Mil. Forces, i. Chs. iv, xiii. As to precedence, K.R., 1765.

(e) A.A., 179 (15), 190 (8).

(f) 10 & 11 Vict. c. 63; 20 Vict. c. 1.

(g) 10 & 11 Vict. c. 63, s. 8.

Ch. XI.

Transfer of
Royal
Marines to
army.

49. The Army Council and the Admiralty can make regulations providing for the transfer with his consent of a man of the Royal Marines to another part of the regular forces, and of a soldier of any part of the regular forces to the Royal Marines, and a man so transferred is to become a Royal Marine or a soldier of the other part of the regular forces as nearly as possible as if he had been enlisted for the force to which he is transferred (a).

Expenses of
Royal
Marines.

50. The expenses of the marine force are included in the votes for the Admiralty, and the force is under the control of the Admiralty, and not of the Army Council; and the Admiralty exercise, in respect of the Royal Marines, many functions that are exercised, in the case of the land forces, directly by His Majesty (b).

Auxiliary Forces (c).

Transfer
of former
auxiliary
forces to
Special
Reserve and
Territorial
Force.

51. Down to the year 1908 the auxiliary forces consisted of the Militia, Yeomanry and Volunteers.

Under the T.R.F. Act, 1907, the units of Militia in the United Kingdom (with the exception of 23 which were disbanded) were transferred to the Special Reserve, and those of the Yeomanry and Volunteers were either transferred as units or amalgamated or reconstituted to form units of the Territorial Force which was then created. Officers of the Militia, who so consented, received commissions in the Special Reserve of Officers, and the men were enlisted as special reservists if they so consented.

Officers and men of the Yeomanry and Volunteers who agreed to come under the provisions of the Act of 1907 received commissions in, or were enlisted for the Territorial Force as the case might be, while those who did not so consent relinquished their commissions or were discharged, and thus the Yeomanry and Volunteers were merged in the Territorial Force.

The Special Reserve, as appears from what has been already written, now forms part of the first class of the Army Reserve and the only auxiliary force raised at the present time in the United Kingdom is the Territorial Force. It does not appear necessary therefore to give an account here of the Militia and Volunteers as they existed prior to 1907, although, as has been pointed out elsewhere, the power to raise these forces still exists. Their general nature is described in Chapter IX.

Territorial
Force.

52. The Territorial Force was created by the Act of 1907 (d), and consists of—

Headquarters	...	...
Honourable	Artillery	(Included under R.H.A. and Infantry).	
Company			
Yeomanry	...	...	54 Regiments.
Royal Horse Artillery	...		14 Batteries.
			14 Ammunition Columns.
Royal Field Artillery	...		123 Batteries.
			41 Ammunition Columns.
R.F.A. Howitzer Brigades			28 Batteries.
			14 Ammunition Columns.
			1 Small Arm Section Ammunition Column.
R.G.A. Mountain Brigade			3 Batteries.
			1 Ammunition Column.

(a) A.A., 179 (12), as amended by subsequent Annual Acts.

(b) A.A., 179 (4) (6)–(11).

(c) This term is defined in A.A., 190 (12).

(d) T.R.F. Act, 1907 (7 Edw. 7, c. 9), p. 755.

R.G.A. Heavy Batteries...	14 Batteries.
	14 Ammunition Columns.
R.G.A. Coast Defence Units	6 Heavy Batteries.
	76 Companies.
Royal Engineers	28 Field Companies.
	14 Divisional Signal Cos.
	15 Signal Cos. Army Troops.
	52 Fortress and Electrical Engineers Companies.
Infantry	207 Battalions and 3 Companies.
Army Service Corps ...	14 Mtd. Bde. T. and S. Columns.
	56 Divisional Companies.
Royal Army Medical Corps	14 Mtd. Bde. Field Ambulances.
	42 Field Ambulances.
	14 Clearing Hospitals.
	23 General Hospitals.
	2 Sanitary Companies.
	14 Medical Schools.
Army Veterinary Corps...	7 Veterinary Hospitals.

The Territorial Force Reserve (a).

53. Under the Act, County Associations were established (b), whose duty it is to raise, organize in accordance with schemes prepared by the Army Council, maintain and administer the units of the Territorial Force in their charge. For this purpose they receive certain grants from the State (c). County Associations.

An Association is also required to ascertain the military resources and capabilities of a county; to give advice and to render assistance to the military authorities (d).

An Association has no power over the training of the force nor does it possess any powers of command. These duties are vested in the military authorities (e).

54. The President of an Association has the right of nominating qualified candidates to first commissions in the force within 30 days after receipt of notice of a vacancy (f). First Commissions.

55. The King, by order under the hand of a Secretary of State, may make orders with respect to the government, discipline, pay and allowances of the Territorial Force, and other matters relating to it; and subject to any such orders the Army Council may make general or special regulations for the like purpose (g). Regulations under the Act.

56. To be nominated for a commission a candidate must be a British subject and be in all respects suitable to hold a commission. Applicants for commissions in the lowest rank apply to County Associations; those desiring commissions in a higher rank apply to the G.O.C. in C. concerned through the usual channel. Appointments to commissions in any but the lowest rank are, however, made only in exceptional circumstances. Officers' appointments.

57. With certain exceptions an officer on appointment receives an outfit grant on stated conditions (h), but is liable to be called upon to refund the amount unless he fulfils the prescribed requirements (i). Outfit grant.

(a) Formed under T.R.F. Act, 1907, s. 7 (6).

(b) T.R.F. Act, 1907, s. 1.

(c) *ib.* s. 3.

(d) *ib.* s. 2.

(e) *ib.* s. 2 (1).

(f) *ib.* s. 8.

(g) *ib.* s. 7. Part I of the T.F. Regs. contains the orders made by the King. See p. 11 T.F. Regs. Under this, the Army Council are the sole administrators and interpreters of the Regulations.

(h) T.F. Regs., 604.

(i) T.F. Regs., 607.

Ch. XI.	<p>58. Pay and allowances, including armament, engineer or corps pay, additional pay and working pay, are (with certain exceptions), issuable at the rates laid down in the Pay Warrant and Allowance Regulations (a) for the days of actual attendance at annual training, at obligatory courses of instruction, and at other times if the G.O.C. in C. approves. A mess allowance of four shillings a day is issuable for each day that the officer is entitled to pay (b).</p>
Pay and allowances.	
Preliminary and annual training, and courses of instruction for officers. Resignation and retirement.	<p>59. The Act of 1907 makes no specific provision for the preliminary or annual training of officers of the force, but the regulations made under section 7 lay down the requirements in this respect (c) as well as the obligatory courses of instruction to be undergone (d).</p> <p>60. An officer may resign his commission provided certain conditions are fulfilled (e), and is liable to compulsory retirement on attaining the age of 60 years, or 65 years in special cases. After 15 years' commissioned service he may be permitted to retain his rank and to wear the uniform in which he last served.</p>
Civil rights and exemptions.	<p>61. An officer of the force who is a sheriff is exempted during embodiment from personally performing that office, and a field officer is not required to serve in the office of high sheriff. No officer or man is compelled to serve as a peace officer or parish officer, and both are exempt from serving on any jury. This latter exemption is an absolute one in Scotland, but in England and Wales it is a qualified exemption (f). The acceptance of a commission in the force by a member of Parliament does not involve the vacation of his seat in Parliament.</p>
Precedence.	<p>62. When serving with officers of the Regular Forces or the Special Reserve, officers of the Territorial Force take rank as the junior of their degree (g).</p>
Application of military law.	<p>63. An officer of the force is subject to military law at all times (h).</p>
Enlistment.	<p>64. Recruits are enlisted for the Territorial Force in a county, and the enlistment is carried out in the same manner as that of recruits for the regular army (i). The term of service is four years (j). Men belonging to any corps of the Royal Navy, regular army, Royal Marines, Army (including Special) Reserve, Militia, Territorial Force, or any Royal Naval Reserve Force, or who have been discharged from those forces or from the Royal Irish Constabulary as unfit for further service; for misconduct, or with a bad or indifferent character; or who have been convicted of a serious offence by the Civil power; foreigners, or men in receipt of disability pensions from army funds, are not permitted to enlist.</p>
Re-engagement.	<p>65. Re-engagement is allowed for 1, 2, 3 or 4 years, as may be fixed by the County Association (k).</p>
Liabilities. Preliminary training and annual training.	<p>66. A man of the force is required to attend the number of drills and fulfil other conditions prescribed by the regulations by way of preliminary training (l), and, annually, to attend a certain</p>

(a) There are certain exceptions to this, see T.F. Regs., 580.

(b) See T.F. Regs., 588 to 600A.

(c) See Appendix VII to T.F. Regs.

(d) See Appendix V to T.F. Regs.

(e) See T.F. Regs., 118 to 120.

(f) T.R.F. Act, 1907, s. 23, and Ch. XII, para. 8.

(g) T.F. Regs., 93.

(h) A.A., 175 (3A).

(i) T.R.F. Act, 1907, ss. 9 and 10.

(j) *ib.*, s. 9 (1) (b). T.F. Regs., 129.

(k) T.F. Regs., 141.

(l) T.R.F. Act, 1907, s. 14 (1) (b). In addition to this the recruit may be required to train for a certain time by way of preliminary training if an Order in Council so directs, but no such order has up to the present been issued (T.R.F. Act, 1907, s. 14 (1) (a)).

number of drills and other courses, as well as to train for not less than eight or more than fifteen days in the dismounted or eighteen days in the mounted branch of the force (a). Subject, however, to any general direction which may be given by the divisional or mounted brigade commander, or commander of coast defences, the O.C. a unit may grant leave to a soldier from the whole or any portion of the annual training, on account of sickness or any other urgent reason (b).

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67. When a Proclamation has been issued (c) ordering the Army Reserve on permanent service, the King may order the Army Council to issue, revoke, or vary instructions for embodying all or any part of the force; and if all men of the first class of the Army Reserve are called out under a Proclamation, then all men of the Territorial Force must be embodied unless both Houses of Parliament present an address to the King asking that the whole force be not embodied. In any case the whole force is not to be embodied until Parliament has had an opportunity of presenting such an address. If it is desired to embody the whole force when Parliament is not sitting, Parliament must be summoned by Proclamation to meet within ten days if it would not otherwise meet sooner (d).

Embodiment.

As regards the Special Service section of the force, see A.A., 176 (6A), and Regulations for the Territorial Force, paras. 8-9A.

68. His Majesty may, by Proclamation, order the Territorial Force to be disembodied, when the Army Council must issue directions for the disembodiment to be carried out (e). Until the Proclamation is issued the Army Council can give directions from time to time for actually calling out for embodiment or for disembodiment any part of the force.

Disembodiment.

69. Non-commissioned officers and men of the force are subject to military law as soldiers when being trained or exercised either alone or with any portion of the regular forces or otherwise; when attached to or otherwise acting as part of or with any regular forces; when embodied; and when called out for actual military service for purposes of defence in pursuance of any agreement (f).

Application of military law.

70. A man who fails to attend at the time and place appointed for preliminary or annual training, or to attend the number of drills, etc., required for preliminary training, or to attend for annual training, is liable to a fine not exceeding five pounds, which can be inflicted by a court of summary jurisdiction (g). Proceedings may be instituted by the commanding officer or any other officer of the unit, but must, in England and Wales, be instituted within six months of the date on which the act complained of was committed.

Failure to attend, or to perform drills required, for preliminary or annual training.

71. When a member of the force neglects or refuses to deliver up on demand, or negligently loses, any articles issued to him as a member of the force he may be proceeded against before a court of summary jurisdiction and is liable to pay the value of the articles; and when he designedly makes away with, sells, pawns, or wrongfully destroys or damages any of such articles he is not only liable for their value but, on conviction by a court of summary jurisdiction, may also be fined a sum not exceeding five pounds (h).

Liability in respect of articles lost, damaged or destroyed.

(a) T.R.F. Act, 1907, s. 15.

(b) T.F. Regs., 396.

(c) Reserve Forces Act, 1932, s. 12.

(d) T.R.F. Act, s. 17.

(e) *ib.*, s. 18.

(f) A.A., 176 (6A). See also T.F. Regs., 8-9A.

(g) T.R.F. Act, 1907, s. 21.

(h) *ib.*, s. 22.

Ch. XI. 72. If a man of the force when embodied, enlists into the regular forces or any force raised in India or a Colony without having obtained a regular discharge from the Territorial Force or without having fulfilled the conditions enabling him so to enlist, he commits the offence of fraudulent enlistment (a).

Fraudulent enlistment and false answer.

If a man on enlistment for the Territorial Force makes a false answer on his attestation he should be dealt with under s. 99 of the Army Act.

Procedure in connection with certain offences.

73. Certain offences must be dealt with before the Civil Courts, some are cognizable by either a civil court or by a court-martial, and others are cognizable by a court-martial alone, and reference should be made to the Territorial Force regulations for particulars (b).

Forfeiture of service.

74. A man who, when called out on embodiment, fails without reasonable excuse to attend, and who afterwards surrenders or is apprehended, does not forfeit the whole of his prior service on conviction as in the case of the regular soldier, but the period which elapsed between the time of the commission of the offence and the time of his apprehension or voluntary surrender does not reckon towards discharge (c).

Enlistment into Special Reserve, Regular Forces and Navy.

75. A man of the force who enlists into the Special Reserve without being discharged from the Territorial Force is held to serve on his Reserve attestation (d); if he enlists into the regular forces, the Royal Marines or Royal Navy, he is deemed to be discharged from the Territorial Force, but must return in good order the articles of clothing, etc., issued to him belonging to the Territorial Force (e). He is not, however, allowed to join the Royal Naval Reserve.

Courts-martial.

76. When a person belonging to the Territorial Force is tried by court-martial, one member of the court, if practicable, is to belong to the force, and to the same branch as that to which the accused belongs (f).

Discharge.

77. The method of obtaining discharge from the force is laid down in the Act (g), and the various classes of discharge are given in the regulations (h), but there is one class of discharge which must be particularly noticed, viz., the discharge of a man for disobedience to orders while doing military duty, for neglect of duty, for misconduct, or for any other sufficient cause. A C.O. has power to discharge a man for any of these reasons (i), but the exercise of this power is ordinarily to be restricted to cases of misconduct or inefficiency while the man is subject to military law. In all cases of this kind an investigation of the alleged misconduct is to be held; the evidence against and for the man, and particulars of the offence or offences, are to be recorded in order that, if the man appeals to the Army Council (j), full particulars of the case may be forthcoming.

Ireland

78. There are no units of the Territorial Force in Ireland.

Miscellaneous.

Royal Military College and Royal Military Academy.

79. The Royal Military College is maintained for the purpose of affording a special military education to candidates for commissions

- (a) T.F.R. Act, 1907, s. 10, and T.F. Regs., 257.
- (b) T.F. Regs. 242-254.
- (c) T.R.F. Act, 1907, s. 20 (3).
- (d) T.F. Regs. 256.
- (e) T.F. Regs. 144.
- (f) R.F. 20 (B).
- (g) T.R.F. Act, 1907, s. 9 (3).
- (h) T.F. Regs., 155-162.
- (i) T.R.F. Act, 1907, s. 9 (4), and T.F. Regs. 151A.

in the Cavalry, Infantry and Army Service Corps, and the Royal Military Academy is similarly maintained for those who are candidates for commissions in the Royal Artillery and Royal Engineers. Each establishment has a code of regulations of its own (a). The gentlemen cadets at these institutions are not subject to military law. Ch. XI.

80. The Duke of York's Royal Military School, the Royal Hibernian Military School and the Queen Victoria School are maintained for the education of the sons of soldiers or deceased soldiers. The boys are not subject to military law. Schools.

81. The primary object of the Officers Training Corps is to provide students at schools and universities with a standardized measure of elementary military training, with a view to their eventually applying for commissions in the Special Reserve of Officers or in the Territorial Force. Officers Training Corps. Object.

82. The corps consists of contingents of those universities and schools whose offer has been accepted by the Army Council. To be eligible for inclusion in the corps a university or school contingent must have an enrolled strength of 30 cadets, and have at least one commissioned officer per company. Constitution.

83. The corps is organized in two divisions :—

- (i) Senior division, composed of university contingents.
 - (ii) Junior division, composed of school contingents.
- Organization.

84. The officers belong to the unattached list of the Territorial Force for service with the O.T.C.; to the Special Reserve (including the Channel Islands Militia and the military forces of Colonies) seconded for service with the corps; officers of Special Reserve or Territorial Force units temporarily attached; and officers of medical units appointed to the Territorial Force supernumerary for service with the O.T.C. The officers are subject to military law at all times. Officers.

85. The cadets have no legal liability to service and are not required to take the oath of allegiance. They are not subject to military law. Cadets.

86. The National Reserve consists of trained officers and soldiers having no further military obligation (b) who register their names with a view to increasing the military resources of the country in the event of imminent national danger (c). These national reservists are organized under the auspices of County Associations (d) in three classes :— The National Reserve.

Class I. Consists of officers and others under 42 years of age who are medically fit to join a combatant unit for service in the field at home or abroad.

Class II. Comprises officers, warrant officers and serjeants under 55 years of age and rank and file under the age of 50 who are medically fit to join a combatant unit for home defence, for duty in fixed positions or for administrative work.

Class III. Consists of those who are unable to undertake any obligation and is sub-divided in three sections.

(a) The Regulations for admission to the R.M.C. and to the R.M.A. respectively were published with Army Orders of 1st November, 1911.

(b) Officers of the General Reserve of Officers, Territorial Force Reserve and Pensioners are permitted to join on certain conditions.

(c) When a Proclamation is issued calling out the Reserves (R.F.A., 1832, s. 12).

(d) See para. 38.

Ch. XI.Annual
grant, etc.

87. An annual grant is made in respect of each National Reservist as follows :—

In Class I. —Eleven shillings.

In Class II. —Six shillings.

In Class III.—One shilling.

The money is paid to County Associations to cover all expenditure of whatever character from public funds. In addition, a gratuity is paid on mobilization to members of Classes I and II, and all National Reservists accepted for service on mobilization will receive current army rates of pay and allowances (a).

Application
of military
law.

88. Neither the officers or other ranks in the National Reserve are subject to military law in peace time, but on mobilization, if accepted for service, National Reservists of Class I would be attested for general service and would then become subject to military law.

National Reservists of Class II would be enlisted into particular units of the Territorial Force for home service only. They might subsequently be available for the Imperial Service Section of that Force, which is liable for general service.

Cadet
units.

89. Cadet units comprise cadet battalions, cadet companies, and all bodies of lads formed for the purpose of receiving instruction of a military nature. County Associations are empowered to grant official recognition to these units, or to cancel recognition already given, and are responsible that those recognized are efficiently organized and administered. These cadet units may be affiliated to a Territorial Force unit.

The cadet force is not subject to military law, and cadet officers and N.C.Os. have no powers of command over members of the Regular, Reserve or Territorial Forces (b).

(a) The National Reserve Regulations were issued with S.A.O. of 7th March, 1913.

(b) The Regulations for cadet units were issued with Army Orders of 1st May, 1912.

CHAPTER XII.

RELATION OF OFFICERS AND SOLDIERS TO CIVIL LIFE.

1. The English law on this subject differs from that of some foreign countries, and a man who becomes a soldier does not cease to be a citizen (a). If he commits an offence against the ordinary criminal law, he can be tried and punished as if he were a civilian, and serious liabilities are incurred by any officer who refuses to deliver him up to the civil magistrate on application (b).

How far in England a soldier is divested of civil rights and liabilities.

2. On the other hand, his civil rights and duties are necessarily subject to some limitation for the purpose of enabling him to fulfil his engagement to serve the Crown (c). Thus he cannot, while in the service, change his domicile, or change the parish of his settlement (d). If he marries without the consent of the military authorities, the marriage is legal, but his wife will not be provided for by those authorities, and he is not punishable for deserting or neglecting to maintain his wife or family, or leaving them chargeable to the union. Special provision has, however, been made for proceeding against him to compel him to maintain his wife and family or bastard child, and for the deduction of a certain sum from his pay for the purpose of such maintenance (e).

Illustrations. Inability to change domicile or settlement. Special provision as to maintenance of wife and family.

3. Certain restrictions have also been imposed on the creditors of the soldier, so as to prevent the Crown losing his services. He cannot be arrested or compelled to appear before a court on account of any debt, damages, or sum of money under 30*l.* (f); but the exemption applies to the person, not the property, of a soldier, and a creditor may sue and have execution, so long as he does not touch the person, pay, or military equipment of the soldier. To avoid injustice to the public from this exemption, the proclamation of "crying down credit" was formerly adopted, originally under an Article of War, and subsequently under the King's Regulations. A duty is now imposed on general officers commanding in chief to notify in local newspapers at least once in every three years that a soldier cannot be placed under stoppages for his private debts, and

Restrictions on creditors of soldier.

(a) Clode, *Mil. Forces*, i. 144; ii. 143. As to the duty of soldiers to perform their part as citizens in repressing breaches of the peace, Chief Justice Sir James Mansfield thus spoke, in 1802: "Since much has been said about soldiers, I will correct a strange mistaken notion which has got abroad, that because men are soldiers they cease to be citizens; a soldier is gifted with all the rights of other citizens, and he is as much bound to prevent a breach of the peace or a felony, as any other citizen. . . . If it is necessary for the purpose of preventing mischief, or for the execution of the laws, it is not only the right of soldiers, but it is their duty to exert themselves in the assisting the execution of a legal process, or to prevent any crime or mischief being committed. It is, therefore, highly important that the mistake should be corrected, which supposes that an Englishman, by taking upon him the additional character of a soldier, puts off any of the rights or duties of an Englishman." *Burdett v. Abbott*, 4 Taunt. p. 401.

(b) A.A. 39, 41, 182. Under the Jurisdiction in Homicides Act, 1862 (25 & 26 Vict. c. 65), a person subject to military law who is charged with the murder or manslaughter of any other person subject to military law in England or Ireland, may be tried in London or Dublin more speedily than under the ordinary law.

(c) Clode, *Mil. Forces*, i. 206.

(d) Clode, *Mil. Forces*, ii. 37, 38, and the legal cases there cited.

(e) A.A. 145.

(f) A.A. 144.

Ch. XII. that persons who suffer soldiers to contract such debts do so at their own risk (*a*). An officer or soldier is unable, legally, to charge or assign his pay or pension (*b*).

Wills of officers and soldiers. 4. An officer or soldier on actual military service, even though not of full age, has power to dispose of his personal estate by a nuncupative will, i.e., a will without writing, declared before a sufficient number of witnesses (*c*). Probate of the will and letters of administration of any common soldier, who is killed or dies in the service of His Majesty, are exempt from stamp duty (*d*). Special provision has been made for collecting and realising the effects of a deceased officer or soldier, and paying certain military debts thereout (*e*).

Exemption of soldier servants from licence duty. 5. Officers are entitled to an exemption from licence duty for any servant who is a soldier in the army, and is employed by the officer in accordance with the regulations of the service (*f*).

Privileges of soldiers in relation to letters. 6. Every non-commissioned officer and soldier whilst on service, is entitled by statute, independently of any post-office regulations for the time being in force, to send or receive letters not exceeding half an ounce by post for one penny prepaid, but any foreign postage in addition must be paid. Where a letter is re-directed, an officer as well as a non-commissioned officer or soldier is entitled to receive the letter free from any postage, foreign or other, chargeable in respect of the re-direction (*g*).

Exemptions of soldiers from local rates and tolls. 7. Officers and soldiers have not any personal exemption from any local rates or tolls, but where an officer occupies property in respect of his office the occupation is treated as occupation by the Crown, and he is not liable to be rated in respect of that property, inasmuch as the Crown is exempt from local rates. If, therefore, the occupation is for his own personal benefit, and not for the benefit of the Crown, an officer will be liable to be rated like any other individual. Similarly, officers and soldiers of the regular forces, when on duty, are exempt from tolls (*h*), but are not so exempt when travelling for their own purposes only.

Exemption from service on juries, &c. 8. Officers of the regular forces on full pay, soldiers of the regular forces, and officers and men of the Territorial Force, are exempt from serving on juries (*i*). Officers on full pay or half-pay are also exempt from being compelled to serve any municipal office

(*a*) K.R., 442.

(*b*) A.A. 141. As to the appropriation of a portion of the pay or pension of a bankrupt officer to his creditors, see s. 53 of the Bankruptcy Act, 1883 (47 & 48 Vict. c. 52) and *In re Ward*, L.R. [1897] 1 Q.B.

(*c*) This privilege was originally reserved to soldiers and sailors by 29 Ch. II, c. 3; it now depends on 7 Will. IV. and 1 Vict. c. 26, s. 11. As to when a soldier is on actual military service, see *In the Goods of Hiscock*, L.R. [1901] P. 78, and *Guttward v. Kneel*, L.R. [1902] P. 99; and as to what may amount to a valid testamentary document, see *In the Goods of Scott*, L.R. [1903] P. 243.

(*d*) 55 Geo. III. c. 184, sched. part III.

(*e*) Regimental Debts Act, 1893 (56 Vict. c. 5).

(*f*) 32 & 33 Vict. c. 14, s. 19 (5). The exemption from the licence duty for keeping a horse, which is given by the same Act, is rendered unnecessary by the repeal of the licence duty by 37 & 38 Vict. c. 16. See also footnote to para. 498, Allowance Regulations.

(*g*) 3 & 4 Vict. c. 96, s. 53; 10 & 11 Vict. c. 55, s. 7; 23 & 24 Vict. c. 65; 38 & 39 Vict. c. 22, s. 7. See also K.R. 1367-1371 as to officers' and soldiers' letters.

(*h*) A.A. 143.

(*i*) In the case of Scotland and Ireland, this exemption is an absolute exemption (6 Geo. IV. c. 22, s. 2, 39 & 40 Vict., c. 78, s. 20, A.A. 147, T.R.F. Act s. 23 (4)); but in the case of England and Wales the exemption is only a qualified exemption as it is only an exemption from being placed on the jury list, and, if a person entitled to exemption is on the list he is bound to serve notwithstanding his exemption. The necessary steps should therefore be taken by persons entitled to exemption to see that they are not placed on the list, and in case a name is wrongly included in the list to have it removed (33 & 34 Vict., c. 77, ss. 9 & 12 A.A. 147, T.R.F. Act s. 23 (4)).

in England (a). Officers of the army, although upon half-pay, and officers and men of the Territorial Force, are also exempt from serving the office of overseer and other parish offices, and a field officer of the Territorial Force is exempt from serving as High Sheriff (b). The above provisions may have been made for the purpose of enabling an officer to fulfil his military duties, but the Army Act further contains a provision which actually *disqualifies* an officer on the active list from holding the office of sheriff, mayor, alderman, or any municipal office in any place in the United Kingdom; this was doubtless originally enacted from jealousy of the military forces acquiring any undue influence by holding influential offices; it does not, however, render an officer ineligible for membership of a county council (c). Officers on full pay are prohibited by the King's Regulations from joining the directorate of any public or other company without permission from the War Office; and they, as well as soldiers, are prohibited from acting either directly or indirectly as agents for any company, firm, or individual engaged in trade (d).

9. An officer or soldier has the same right as a civilian to vote at an election for members of Parliament, and if himself elected, is entitled without leave or order to attend the House of Commons (e). Officers elected to the House of Commons were formerly placed on half pay, but are now, if below the substantive rank of colonel, given the option of being placed on the seconded list or on the half-pay list (f). The acceptance by a member of the House of Commons of a first commission in the army vacates his seat, but the acceptance of a new commission by a member already a commissioned officer does not; and it may be that an officer in the army will not vacate his seat by the acceptance of an office which, if filled by a civilian, would vacate the seat (g). An officer or soldier, if in the United Kingdom, ought to be allowed, if he wishes, to go to the place of election and record his vote, unless military exigencies render it impossible (h). But soldiers not being electors are excluded, in Great Britain, though not in Ireland, from being present at places of election (i).

Right to vote at Parliamentary election, and to sit in House of Commons.

10. In conclusion may be noticed the Act which enables military savings banks to be established for the purpose of military deposits from non-commissioned officers and soldiers, under regulations made by the Secretary of State for War, with the concurrence of the Commander-in-Chief and of the Treasury (k).

Military Savings Banks.

(a) 45 & 46 Vict. c. 50, s. 253.

(b) Steer's Parish Law (8th Edn.), pp. 105, 361, and T.R.F. Act, s. 23.

(c) A.A. 146.

(d) K.R., 449.

(e) Clode, Mil. Forces, i. 192, 195. The statement that an officer or soldier is entitled without leave to go to a place of election and record his vote appears to have been based upon 10 & 11 Vict. c. 21, which repealed the former Act (8 Geo. 2, c. 30). Those Acts never applied to persons out of the United Kingdom, and as regards persons in the United Kingdom, appear to have been merely intended to save from the enactments prohibiting soldiers being present at a place of election, those of them who were entitled to attend and vote.

(f) A.O. 252 of 1906 and A.O. 96 of 1911.

(g) 6 Anne, c. 41, s. 27 (c. 7, s. 28 in ordinary editions). Clode, Mil. Forces, i. pp. 192, 193.

(h) As to right to vote in respect of occupation of quarters, see *Atkinson v. Collard*, L.R. 16 Q.B.D. 254; *Spittall v. Brook*, L.R. 18 Q.B.D. 428.

(i) 10 & 11 Vict. c. 21; 26 & 27 Vict. c. 12. For the history of the old practice of keeping soldiers out of assize towns during the holding of assizes, see Clode, Mil. Forces, ii. pp. 203-205.

(k) 22 & 23 Vict. c. 20. There is now no Commander-in-Chief.

CHAPTER XIII.

SUMMARY OF THE LAW OF RIOT AND INSURRECTION.

Object of
chapter.

1. The object of this chapter is to give such an explanation of the law relating to unlawful assemblies, riots, and insurrections as may be useful to officers when called upon by the civil authorities to assist them in suppressing disturbances (a).

Definition
of unlawful
assembly.

2. The first question is, What is an unlawful assembly? for the mere gathering together of people is no crime in the eye of the law. "There is no doubt that the people of this country have a perfect right to meet for the purpose of stating what are or even what they consider to be their grievances; that right they always have had, and I trust always will have; but in order to transmit that right unimpaired to posterity, it is necessary that it should be regulated by law and restrained by reason" (b).

An unlawful assembly, then, is any meeting whatsoever of great numbers of people with such circumstances of terror as cannot but endanger the public peace and raise fears and jealousies among the King's subjects, as where great numbers complaining of a common grievance meet together, armed in a warlike manner, in order to consult together concerning the most proper means for the recovery of their interests; for no one can foresee what may be the event of such an assembly (c). The commission of an act of violence by any one or more of those assembled is not necessary to make the assembly unlawful, if its character and circumstances are such as to be calculated to alarm, not only foolish or timid people, but persons of reasonable firmness and courage (d). If the assembly is for a lawful purpose and with no intention of carrying out that purpose in an unlawful manner, the assembly is not an unlawful assembly, even though the persons assembling know that the assembly is likely to be resisted by others (e).

Example of
what is, and
what is not,
an unlawful
assembly.

3. Accordingly, in the case of a Chartist meeting at Newport in 1839, an assembly was held to be unlawful in which from 300 to 1,000 persons were gathered together, and in respect to which evidence was given that the speakers endeavoured to incite the people to disaffection and the use of physical force. No actual outrage was perpetrated, but numbers of persons armed with sticks were proved to have marched in procession, and several witnesses swore that they apprehended danger both to life and property (f). On the other hand, a peaceful meeting of the Salva-

(a) Riot is a common law offence; the term insurrection is used in this chapter as a description of the offence that is technically called "levying war against the King."

(b) Charge of Baron Alderson to the Grand Jury in *R. v. Vincent*, 9 C. & P. 95.

(c) Hawkins, Bk. 1. ch. lxx. sec. 9. See *R. v. Vincent*, ante; *R. v. Neale*, ib., 431. See also the reply of Lord Haldane to Mr. Curran in Appendix I to this Chapter, at p. 229.

(d) *R. v. Vincent*, ante, at p. 109.

(e) *Beatty v. Gillbanks*, L.R. 9 Q.B.D. 308. The principle established by this case does not appear to be affected by the later decision in *Wise v. Dunning*, L.R. [1902] 1 K.B. 187; see Dicey, *Law of the Constitution* (6th Edn.), App. Note V., p. 448.

(f) *R. v. Vincent*, ante; and see *R. v. Neale*, ante, in which the law is similarly laid down by Mr. Justice Littledale.

tion Army is not an unlawful assembly and cannot be made so by the knowledge that the assembly will be resisted and a breach of the peace ensue (a). Oh. XIII.

4. A riot is a tumultuous disturbance of the peace by three or more persons assembling together of their own authority with an intent mutually to assist one another against any who oppose them, in the execution of some enterprise of a *private nature*, and afterwards actually executing the same in a violent and turbulent manner to the terror of the people. It is immaterial whether the act done be unlawful or not, but there must be an act (b). Doing the act in a manner calculated to inspire people with terror is punishable, whether it be lawful or unlawful; but where the object of the assembly is lawful, it requires far stronger evidence of the terror caused by the means used, to induce a jury to return a verdict of guiltily, than if the object were unlawful. Definition of "riot."

5. For example, persons assembling together on a racecourse and tumultuously pulling down a booth, or gathering together in a tumultuous manner and breaking threshing machines, are guilty of a riot. Again, a number of persons assembling for a lawful object, such as pulling down an inclosure which has been illegally put up, will be guilty of a riot, if their assembling is accompanied with circumstances of actual force or violence calculated to inspire people with terror. On the other hand, if an assembly of persons be not accompanied with such circumstances as these, it can never be deemed a riot. Examples of riot.

6. An insurrection differs from a riot in this—that a riot has in view some enterprise of a *private nature*, while an insurrection savours of high treason, and contemplates some enterprise of a *general and public nature* (c). An insurrection, in short, involves an intention to "levy war against the King," as it is technically called; or otherwise to act in general defiance of the government of the country. Definition of "insurrection."

7. For example, a mob assembling to pull down or burn a cotton mill, because the proprietor is obnoxious to them, are engaged in a riot. If the object were to attack a barrack or seize a store of arms with a view to arm themselves and make war against the government, they would be in a state of insurrection. Examples of insurrection.

8. In the case of *R. v. Frost* (d), the insurgents, numbering about 5,000, were armed, many with guns or pikes, some with swords, others with mandrills (a kind of pickaxe for cutting coal), and others with scythes fixed on sticks, or with bludgeons. They marched to Newport in a sort of military order, and dangerously wounded a person sent out to reconnoitre. On arriving at Newport, they attempted to force their way into the Westgate Inn, where troops had been stationed by the mayor, and called upon the soldiers to surrender. On the reply being given, "No, never," they fired on the soldiers, who after a time returned the fire, when the insurgents dispersed. Case of *R. v. Frost*.

In this case it was contended on behalf of the prisoners that the object of the insurgents was to procure the liberation of certain

(a) See para. 2, note (e).

(b) Hawkins, Bk. 1, ch. lxx. sec. 1; and see *R. v. Graham*, 16 Cox C.C. 22.

(c) *R. v. Vincent*, ante. See also Lord Mansfield's charge on the trial of Lord George Gordon in 1781, 21 State Trials, 644. Lord George Gordon was indicted for high treason, but acquitted on the ground that his acts, in the opinion of the jury, did not amount to constructive levying of war against the Crown.

(d) 9 C. & P. 129. This case also arose out of the Chartist movement in 1839, and should be compared with *R. v. Vincent*, ante.

Ch. XIII. prisoners who were in custody at the Westgate Inn, and to obtain better treatment for a prisoner named Vincent. To this it was replied that the intention of the prisoners was to take possession of the town of Newport by surprise, terror, or force, and to use that possession as the means of raising a rebellion.

It was admitted that, if the first of the above objects was the real one, the prisoners were not guilty of high treason, but evidence was given that the second was their real purpose, and that they had been planning an insurrection for some time. Accordingly, they were found guilty of high treason; in other words, the enterprise was considered to be an insurrection, and not a riot.

Distinction between unlawful assembly, riot, and insurrection.

9. It will be seen from the foregoing definitions and examples that an unlawful assembly and a riot are different stages as it were of the crime of insurrection. An unlawful assembly is an assembly which may reasonably be apprehended to cause danger to the public peace, through the action of the persons constituting the assembly. As soon as an act of violence is perpetrated it becomes a riot; while if the act of violence be one of a public nature, and with the intention of carrying into effect any general political purpose, it becomes an insurrection or rebellion, and not a riot (a).

Distinction in punishment.

10. As might be expected from the different character of the meetings, the offence of taking part in an unlawful assembly, a riot, or an insurrection involves very different degrees of guilt and very different punishments. A man convicted of being at an unlawful assembly, or of taking part in a riot, is guilty of a misdemeanour, and is punishable at common law by fine or imprisonment, or both; but by statute there is this wide difference made between the two offences, that in the case of riot hard labour may be inflicted, whilst in the case of an unlawful assembly the imprisonment is without hard labour (b). A participator in an insurrection may be held guilty of treason and be capitally punished.

Additional crimes usually incident to riots and insurrections.

11. The offence of taking part in a riot, or an insurrection, is independent of any additional crime which the persons assembled may either themselves commit, or of which they may be held to be guilty as principals, by reason of their forming part of the mob which commits such crime. For example, a riot seldom takes place without the rioters breaking into houses or otherwise destroying property. An insurrection almost always involves murder or attempts to murder. All persons present at the commission of such crimes are equally principals in the breaking into houses,

(a) Baron Alderson in his charge to the Grand Jury, delivered at the Monmouth Assizes in 1839 (9 C. & P. 94 n.), cited the following observations of Mr. Justice Bayley:—"If the persons who assemble together say, 'We will have what we want, whether it be according to law or not, a meeting for such a purpose, however it may be masked, if it be really for a purpose of that kind, is illegal. If a meeting, from its general appearance, and from all the accompanying circumstances, is calculated to excite terror, alarm, and consternation, it is generally criminal and unlawful.'" Baron Alderson continued, "These are, as I take it, the clear principles of law, an unlawful assembly differing in this respect from a riot, that a riot must go forward to the perpetration of some act which the unlawful assembly is calculated to originate and inspire. Something must be executed in a turbulent manner to constitute a riot, but in these cases it must be some enterprise of a private nature, because if the enterprise be of a general and public nature, it savours of high treason, and there is no doubt that if you find these persons assembled together by delegates dispersed from any central jurisdiction in this kingdom, and those persons so meeting together in consequence of a delegation from a central body commit any act of violence for the purpose of carrying into effect any general political purpose, they run the risk of being charged with high treason."

(b) 1 Hawk., c. 65, s. 12. Hard labour may be given, under 3 Geo. 4, c. 114. As will be seen hereafter, rioters remaining for an hour after the Riot Act has been read become felons.

destroying the property, murder, or attempt to murder, although at the time some of them take no actual part in the transaction at all : but practically the extreme measure of punishment is usually awarded only to the leaders (a).

Oh. XIII.

12. The law would fall far short of what is needed for the preservation of society if it did not allow all necessary measures to be taken for dispersing or otherwise putting an end to unlawful assemblies, riots, and insurrection. The law accordingly declares that an unlawful assembly may be dispersed, although it has committed no act of violence ; for it is better that individuals should be stopped before they proceed to outrage and violence ; and a small amount of punishment in the first instance will probably save a great amount of crime afterwards (b).

Suppression of unlawful assemblies.

13. So far the law is clear ; but a grave practical difficulty arises as to the degree of force to be used in effecting the dispersion. If the assembly is verging on a riot, and the demeanour of those present shows that they are bent on serious mischief, it may be the bounden duty of the magistrates to take immediate steps to disperse the assembly, even using force if necessary. If, on the other hand, the assembly is unlawful but in a slight degree, and there is no immediate apprehension of violence, it can scarcely be justifiable to attempt to disperse it by force, or wise, as a rule, to display force. No positive rule can be laid down, but different cases must depend on their own circumstances. If resort be had to force, the principle is that so much force only is to be used as is sufficient to effect the object in view, namely, the dispersion of the assembly ; and if injury results to any person from the use of that force, the question to be tried is whether the means used were or were not more violent than the occasion required (c).

Degree of force to be used.

14. In dealing with riot, the law speaks more decidedly. Every magistrate, sheriff, constable, and other peace officer is required to do all that in him lies for the suppression of a riot, and each has authority to command all other subjects of the King to assist him in that undertaking. Every man is bound, when so called upon, to yield a ready and implicit obedience, and do his utmost to assist in suppressing any tumultuous assembly (d).

Suppression of riots.

15. "If the riot be general and dangerous, every subject may arm himself against the evil-doers to keep the peace. Such was the opinion of all the judges of England in the time of Queen Elizabeth in a case called 'The case of Arms' (Popham's Rep., 121) ; although the judges add that it would be more discreet for every one in such a case to attend and be assistant to the justices, sheriffs, or other ministers of the King in doing this. It would undoubtedly be more advisable so to do ; for the presence and authority of the magistrate would restrain the proceeding to such extremities until the danger was sufficiently immediate, or until some felony was either committed or could not be prevented without recourse to arms ; and, at all events, the assistance given by men who act in subordination and concert with the civil magistrate, will be more effectual to attain the object proposed than any efforts, however well intended, of separated and disunited individuals. But if the occasion demands immediate action, and no opportunity is given for procuring the advice or

Extract from charge of Chief Justice Tindal.

(a) See *R. v. Howell*, 9 C. & P. 437.

(b) Baron Alderson in *R. v. Vincent*, 9 C. & P. 94.

(c) *R. v. Neale*, 9 C. & P. 435. See also the appendices to this chapter.

(d) Charge of Chief Justice Tindal to the Grand Jury in 1832, quoted in *R. v. Pinney*, 5 C. & P. 262, note.

Ch. XIII. "sanction of the magistrate, it is the duty of every subject to act for himself and upon his own responsibility in suppressing a riotous and tumultuous assembly; and he may be assured that whatever is honestly done by him in the execution of that object will be supported and justified by the common law" (a).

Use of
deadly
weapons by
those
engaged in
dispersing
riots.

16. With regard to the circumstances which may justify the use of deadly weapons by those engaged in endeavouring to disperse a riot, Chief Justice Tindal, in the charge already quoted, made the following observations (b):—"There is one case which stands in a different situation from the rest, and to which it may be proper that I should call your particular attention—I mean the case of James Cossley Lewis, who is at present at large upon his recognizance, but who stands charged, upon an inquest before the coroner, with the offence of manslaughter, in shooting a boy of the name of Morris. It appears from the depositions before the coroner, that Lewis was acting in aid of the civil authorities in assisting to clear the streets, after proclamation had been regularly made, requiring the rioters to disperse themselves, and after they had continued together for more than an hour from the time of making proclamation. It appears, also, by the testimony of the witnesses that the pistol was not aimed at the boy who was unfortunately struck by the ball. The nature, however, of the offence committed by Lewis will not depend so much upon that fact as upon the circumstances under which the pistol was originally discharged. If the firing of the pistol by Lewis was a rash act, uncalled for by the occasion, or if it was discharged negligently and carelessly, the offence would amount to manslaughter, *but if it was discharged in the fair and honest execution of his duty, in endeavouring to disperse the mob, by reason of their resisting*, the act of firing the pistol was then an act justified by the occasion, under the Riot Act before referred to, and the killing of the boy would then amount to accidental death only, and not to the offence of manslaughter."

In apprehension of rioters,

17. There is no doubt that a person lawfully engaged in trying to apprehend a rioter is justified in using any degree of force to protect himself, or to overcome resistance. It is, however, sometimes impracticable to attempt the apprehension of individuals, without using means calculated to occasion bloodshed, and the firing on a mob (which is what using deadly weapons practically means) can only be excused by the necessity of self-protection, or by the circumstance of the force at the disposal of the authorities being so small that the commission of some felonious outrage—such as the burning of a mill, or the breaking open of a prison, or the attacking of a barrack—cannot be otherwise prevented (c).

(a) Charge of Chief Justice Tindal, quoted in *R. v. Pinney*, 5 C. & P. 262, note. From early times the duty of sheriffs and magistrates to suppress riots and apprehend rioters, and the obligation of the people of the county to assist them have been laid down and enforced by statutes. Some of these, as, for example, 15 Rich. II, c. 2 (1391), 13 Hen. IV, c. 7 (1411), 2 Hen. V, st. 1, c. 8 (1414), are still unrepealed, and to some extent, at all events in force.

(b) *R. v. Pinney*, 5 C. & P. 267, note.

(c) In the Six Mile Bridge case or riots at the County Clare election in 1852, an escort of two officers, two sergeants, and forty rank and file, employed to protect voters going to poll, were attacked and stoned by the mob. The soldiers fired without orders from their officers, but, as was subsequently sworn by the commanding officer, *in defence of their own lives*, and killed two or three of the mob. Indictments were preferred against those who fired, or were supposed to have fired, but the bills were thrown out by the Grand Jury. The charge of Mr. Justice Perrin to the Grand Jury in this case appears virtually to ignore the riotous character and unlawful object of the mob, and the fact of the unprovoked attack on the soldiers.

18. The observations made above with respect to the duty of suppressing riots apply still more strongly to insurrections, or "riots which savour of rebellion." In such cases the use of arms may be resorted to as soon as the intention of the insurgents to carry their purpose by force is shown by open acts of violence, and it becomes apparent that immediate action is necessary. Ob. XIII.
Suppression of insurrection.

19. The expediency of arming the civil power with authority to put an end to serious risings, before the commission of actual outrage, was doubtless the motive which led to the passing of the Riot Act (1 Geo. I, stat. 2, c. 5) in 1715 (a). Account of Riot Act.

20. The first section enacts that, "If any persons, to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace. . . . and being required or commanded by any . . . justice, . . . by proclamation to be made in the King's name, in the form hereinafter directed, to disperse themselves, and peaceably to depart . . . , shall, to the number of twelve or more . . . unlawfully, riotously, and tumultuously remain or continue together for one hour after such command or request made by proclamation," they shall be adjudged felons. Suppose, therefore, a riot to have commenced, and the authorities present to be of opinion that serious consequences may be apprehended if the rioters are not dispersed within a limited time, it would be their duty to make the proclamation required by this Act; and if twelve or more persons remain together riotously and tumultuously after the expiration of an hour they may be treated as felons, and will be subject to the punishment of penal servitude for life or not less than three years, or to imprisonment with or without hard labour, not exceeding two years. Effect of proclamation under Act.

21. The form of the proclamation and the mode of making it are provided for in the next section, which directs the justice, among the rioters, or as near them as he can safely come, to command silence, and then with a loud voice to make proclamation in the following words:— Form of proclamation.

"Our Sovereign Lord the King chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations or to their lawful business, upon the pains contained in the Act made in the first year of King George the First, for preventing tumults and riotous assemblies.

"God save the King" (b).

22. Further, section 3 provides that if the persons so riotously and tumultuously assembled, or twelve or more of them, remain together for one hour after the proclamation, they may be seized and apprehended by any justice or person assisting him; and that if any of the persons so unlawfully assembled happen to be killed, maimed, or hurt in the dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them, by reason of their resisting, then the justices, constables, and persons assisting such justices and constables shall be fully indemnified for any such killing, maiming, or hurting. Persons hindering the reading of the proclamation, and if the proclamation be hindered, persons Effect of remaining for an hour after proclamation.

(a) Similar Acts had previously been passed: 3 & 4 Edw. VI, c. 5; 1 Mar. sess. 2, c. 12.

(b) In *R. v. Chud*, 4 C. & F., 442, it was decided that if in reading the proclamation from the Riot Act the magistrates omit to read the words "God save the King" at the end of it, persons remaining together for an hour after such reading of the proclamation cannot be convicted under s. 1 of the Act.

Ch. XIII. not dispersing within an hour after the hindrance, suffer the same punishment as persons who remain together for an hour after the reading of the proclamation (a).

A riot may be dispersed before the proclamation in the Riot Act is read.

23. In the riots excited by Lord George Gordon in 1780, the mob were allowed to proceed to great excesses without any interference by the civil or military authorities; and this appears to have been allowed under the impression that until the proclamation in the Riot Act was read the dispersion of the rioters would be illegal. To correct this impression Lord Loughborough made use of the following language:—

"It has been imagined because the law allows an hour for the 'dispersion of a mob to whom the Riot Act has been read (b) by 'the magistrate, the better to support the civil authority, that 'during that period of time the civil power and the magistracy are 'disarmed, and the King's subjects, whose duty it is at all times 'to suppress riots, are to remain quiet and passive. No such 'meaning was within view of the legislature, nor does the operation of the Act warrant any such effect. The civil magistrates 'are left in possession of those powers which the law had given 'them before. If the mob collectively, or a part of it, or any 'individual, within or before the expiration of that hour attempts 'or begins to perpetrate an outrage amounting to felony, to pull 'down a house, or by any other act to violate the law, it is the duty 'of all present, of whatever description they may be, to endeavour 'to stop the mischief and to apprehend the offender' (c).

Further observations.

24. This passage shows that the Riot Act does not destroy any power which lawfully existed before its passing for the suppression of riot (d). But it also admits the inference that, as a general rule, it would be extremely imprudent to use an armed force against a mob until the proclamation required by the Act has been made and the appointed space of an hour elapsed, except in circumstances where either the proclamation cannot be read owing to the violence of the mob, or the mob, before the expiration of an hour after it has been read, perpetrate or are evidently about to perpetrate some outrage amounting to felony. In every such case, when it arises, the question has to be decided—At what point does the felonious purpose become so manifest as to justify action?

Circumstances which may guide authorities in use of force.

25. Undoubtedly the question is difficult, but many circumstances suggest themselves, which may serve as a guide to justices and officers called on to act in cases of sudden tumult. The first question they will ask themselves is for what purpose has the mob come together? as a knowledge of the purpose of the mob usually furnishes the most certain clue to a determination of the time and mode at and in which forcible interference should take place. For example, a mob assembles for the purpose of pulling down an obstacle to a footpath, which has been obstructed either illegally or with doubtful legality. Their proceedings may be disorderly, but their purpose may be legal, and certainly is not felonious. The probability is that as soon as they have effected their object they will disperse. In such a case, the best course is to use no force, but merely to take means to identify some of the parties concerned, with a view to subsequent proceedings, if necessary.

(a) As to punishment under the Riot Act, see 7 Will. IV. and 1 Vict. c. 21, s. 1; 20 & 21 Vict. c. 3, s. 2; 54 & 55 Vict. c. 69, s. 1.

(b) This expression, though very common, is not strictly accurate. Not the Act but only the proclamation is required to be read or recited.

(c) 21 Howell's State Trials, 493.

(d) See appendices to this chapter, and K. R. 956-976.

26. On the other hand, suppose a mob determined to destroy the cotton mill of an obnoxious proprietor. They arm themselves with weapons to break open the doors, and they show a settled intention to carry their object into effect. In such a case their intent is felonious, but they should be warned of the danger they will incur in attempting such an outrage, and the proclamation in the Riot Act should, if time allow, be read; and whether it has been read or not, and whether the hour after the reading has or has not expired, the apprehension of the ringleaders, or any other repressive measures which may be necessary to prevent the actual commission of an outrage, should be effected, if possible. Soldiers may be summoned in case the civil authority is in danger of being overpowered, but they should not be called into action till the necessity arises for protecting life and property by military force.

Further illustrations.

27. Take another instance. A meeting assembles in procession with a view to political objects, say the furtherance of Parliamentary reform, the abolition of an obnoxious tax, or any other political object not involving rebellion against the established authority, or a clear intention to enforce by violence the object, though legal, which they have in view. It is, of course, quite possible that excitement may prompt them to outrage, but such a meeting, so long as it commits no act of violence, should be interfered with as little as may be, and no exhibition of force should take place till some violent crime has been or is about to be committed.

Further illustrations.

28. On the other hand, an assemblage which declares openly that it proposes to attack the constituted authorities, and which consists wholly or partially of armed men; or an attempt like that of the Fenians at Chester in 1867 to seize a castle for the purpose of obtaining arms cannot be too quickly dealt with, and force should be repelled by force, care being taken to avoid any unnecessary bloodshed or injury.

In case of insurrection.

29. The conclusions deducible from the foregoing pages appear to be as follows :—

Summary of law as to unlawful assemblies, riots, and insurrections.

1. Persons attending an unlawful assembly are guilty of a misdemeanour, and the magistrates may, and in certain circumstances ought to, disperse an unlawful assembly.

2. Rioters, before the proclamation contained in the Riot Act has been read and an hour has expired, are guilty of a grave misdemeanour, and may be dispersed by the magistrates. After the proclamation has been read and an hour has expired, all persons riotously continuing together, to the number of twelve or more, become felons, and the Act contains a clause indemnifying the officers and their assistants in case of any of the mob being killed or injured in the endeavour of the officers and their assistants to seize, apprehend, or disperse them.

3. Insurgents, or persons engaged in an insurrection, are guilty of treason, the gravest sort of crime, and it is the duty of the magistrates to take every lawful means to put down an insurrection.

30. The law which commands the suppression of unlawful assemblies, riots, and insurrections necessarily justifies the civil power in using the necessary degree of force for their suppression. The difficulty is to ascertain what is this necessary degree of force, and the danger of making a mistake in the matter is serious, as any excess in the use of force constitutes a crime.

Summary of law as to force to be used.

31. Beginning with an unlawful assembly, it would appear that the police have power to command those present to go away, and to arrest them if they do not go, also to stop others whom

In case of unlawful assembly.

Ch. XIII. they see joining them (a). If the parties interfered with resist, such force may be used as will compel obedience; but it would be extremely inadvisable to use any such force as would maim or injure the person resisting, unless he himself made an attack inflicting, or at all events calculated to inflict, grievous personal injury on his captor.

In case of riot. 32. Proceeding to the case of a riot before the proclamation required by the Riot Act is read, the same observations apply as in the case of an unlawful assembly. After the proclamation has been read and an hour has elapsed, considerable force may, if necessary, be used for the purpose of dispersing the mob. If the mob are committing, or evidently about to commit, some outrage calculated to endanger life or property, then, even before the expiration of the hour after the reading of the proclamation, or even without reading the proclamation at all, force may equally be used. But even then deadly weapons ought not to be employed against the rioters, unless they are armed, or are in a position to inflict grievous injury on the persons endeavouring to disperse them, or are committing, or on the point of committing, some felonious outrage, which can only be stopped by armed force (b).

In case of insurrection. 33. The existence of an armed insurrection would justify the use of any degree of force necessary effectually to meet and cope with the insurrection.

Application of preceding observations to troops aiding civil power. 34. Applying the foregoing rules respecting the use of force to soldiers, the following observations occur (c). Soldiers, when acting in aid of the civil power, in no respect differ, in the view of the law, from armed citizens. Their organisation prevents their being conveniently employed in using moderate force for the purpose of dispersing or apprehending rioters without doing them any injury; and as a general rule any action on their part involves the risk of inflicting death, or, at all events, grievous bodily harm. Soldiers, therefore, should never be required to act except in cases where the riot cannot reasonably be expected to be quelled without resorting to such means of repression. These cases are practically confined to riots in which violent crimes, such as murder, house-breaking, or arson, are being committed, or are likely to be committed, and to insurrections in which an intention is clearly shown to attempt by force of arms the overthrow of the government, or the execution of some general political purpose (b).

Division of responsibility between magistrates and military officer. 35. There remains to be considered the question on whom the responsibility of acting rests in the case of the military being employed in the suppression of disturbances. The primary duty of preserving public order rests with the civil power. An officer, therefore, in all cases where it is practicable, should place himself under the orders of a magistrate. It will be the duty of the magistrate to request the officer "to take action" (d). On the other hand, an officer will not perform his duty who, from fear of responsibility, lies by and allows outrages to be committed which it is in his power to check, merely on the ground that there is no magistrate on the spot to give orders to the military (e). If the officer and magistrate are acting together, the obligation lies on the magistrate to give orders, and an officer would incur considerable responsibility by firing without his orders, or refusing to

(a) Hawkins, Bk. 1, ch. lxx, sec. 11.

(b) See Appendices to this Chapter.

(c) The duties of the military in aid of the civil power are laid down in K.R., 955-975.

(d) K.R., 963-972.

(e) K.R., 974; such cases are, however, very exceptional.

fire in pursuance of his orders. Still, the law of England is that a man obeys an illegal order at his own risk, and circumstances might arise which would justify the officer in firing or not firing, notwithstanding the magistrate might give orders to the contrary (a). The magistrate, also, if he acts with discretion, will necessarily defer in military matters to the opinion of an officer, and if he were to give orders to fire upon rioters, although dissuaded by the officer accompanying him he would, as was said in the case of *R. v. Pinney*, have great difficulty in defending himself in the event of death occurring, should he be indicted for manslaughter (b).

36. Complaint was made by Sir Charles Napier in his Remarks on Military Law, of the hardship of imposing on an officer the obligation of deciding whether he is or is not justified in ordering his men to act. He contended that an officer ought not to be liable to trial by the ordinary courts of justice for anything he may do in executing the duty imposed on him by the civil magistrate, namely, to quell the riot (c).

Opinion of
Sir Charles
Napier.

The answer is, that an officer has no greater responsibility than a civilian. Mr. Justice Littledale, in the case of *R. v. Pinney*, says:—

“Now a person, whether a magistrate or a peace officer, who has the duty of suppressing a riot, is placed in a very difficult situation, for if by his acts he causes death, he is liable to be indicted for murder or manslaughter; and if he does not act he is liable to an indictment or an information for neglect; he is therefore bound to hit the precise line of his duty, and how difficult it is to hit that precise line will be matter for your consideration; but that, difficult as it may be, he is bound to do. Whether a man has sought a public situation, as is often the case of mayors and magistrates, or whether as a peace officer he has been compelled to take the office that he holds, the same rule applies, and if persons were not compelled to act according to law, there would be an end of society.”

At the same time the law has always made liberal allowance for the difficulties of persons so circumstanced, and persons whose intention is honest and upright, and who act with firmness to the best of their judgment, need seldom fear the results of inquiry into their conduct.

APPENDIX I.

Evidence given by the Right Hon. R. B. Haldane, K.C., M.P., (d) Secretary of State for War, before a Select Committee on Employment of Military in cases of Disturbance. (Parl. paper 1908, H.C. 236.)

103. *The Chairman.*—You have been so good as to come before us to state your views, and, as I understand, the views of your department, on the questions which we are appointed to investigate. I have not any *precis* at all of your evidence, so I will ask you to make your statement in any form that you please?—The material which I propose to offer for the consideration of the Committee relates simply to the general law, which is a subject not unattended with obscurity. Mr. Troup in his

(a) K.R., 964, 965.

(b) See *R. v. Pinney*, 5 C. & P. 273. “The next thing imputed against the defendant is that there was a want of energy in his conduct in not ordering the military to fire upon the rioters. Upon this part of the case it appears that he was intending to do so, but was dissuaded by Colonel Brereton and also by Major Mackworth, and if the defendant had given an order to fire upon the rioters, and death had ensued, he would, upon an indictment for murder or manslaughter, have had great difficulty to defend himself, if it had appeared that he had given the order to fire against the advice of two distinguished military officers.” As to the liability of subordinates, see Ch. VIII, para. 95.

(c) Quoted by Clode, *Mil. Forces* ii, p. 153.

(d) Now Viscount Haldane, Lord Chancellor.

Ch. XIII. evidence on Tuesday, with which evidence I agree, states that in 1895 the King's Regulations were revised in consequence of some inquiries that were made at that time, and as they now stand they contain directions which are given on behalf of the commanding authorities to the military. They do not, and cannot, alter the common law. They are mere instructions to the commanding officers and the troops how to behave themselves in case they are called out, and they require to be read, consequently, as in harmony with the general law, which they do not purport in any way to alter. The general law, therefore, is the key to the situation, and the general law is, in my opinion, quite simple, although, for the reasons I will point out in a moment, there has been some misunderstanding about it. Broadly stated, there are two principles which form part of the common law of this country. The one is that every citizen is bound to come to the assistance of the civil authority when the civil authority requires his assistance to enforce law and order. That applies to the soldier, who is in no different position from anybody else. But there is a second principle which does bear upon the duty of the soldier, and that is that when you do come to the assistance of the civil authority which has requisitioned you, neither you, nor for that matter the civil authority, is entitled to use more force than is necessary in order to assert the cause of law and order. Now, the soldier is a person who is different from an ordinary citizen in this, that he is armed with a deadly weapon, and, moreover, he comes out in a military formation. The result is that if he appears unnecessarily he is apt to create an impression in the minds of those who are about of a hostile character. His very menacing appearance may lead to the very thing which it is his purpose to prevent—disturbance. For that reason, in the War Office, we are very averse to allowing the military to be employed. We are compelled to do it; we have no choice; we have to obey the law; but we always tend to insist—and while I am there we always shall insist very strongly—on this, that we are called out legally and not illegally. We are called out illegally if we are called out under any circumstances which admit of being dealt with by a force less menacing than a military force necessarily is. There is a principle which must be borne in mind, and that is that people are taken to intend the consequences of their actions. It may be perfectly legal for the military to march up and along a certain street, but, if their doing so will unnecessarily and unjustifiably bring about a disturbance, the military may find themselves breaking the law. There are familiar cases in the books. There is one case in which somebody in the neighbourhood of the Strand owned a theatre, and he gave a performance of a very well-known play, which had the result of attracting an enormous crowd trying to get in. He was acting perfectly legally in opening his theatre and advertising the play, but he created such a disturbance by attracting the crowd that he was held liable to injunction. In the same way it has been held in the courts that if you put up a very exciting and stirring advertisement in Fleet Street and a crowd collects and blocks the pavement, you are liable. I say that by the way of illustrating that if the military, even within their rights, come upon the streets in circumstances when their doing so may create disturbance, they may be committing an offence against the law. That is a principle which I am always disposed to bear very closely in mind when dealing with the question whether they should act or not. But, subject to those qualifications, I wish to emphasize this, that the War Office has no discretion. We are in control of a number of people who are citizens as well as soldiers, and if they are requisitioned to assist the civil authority, then, if it is necessary that they should assist, and if they are required, and they cannot be done without, they have to go. That brings me to what I want to make clear here, because it is the vital point, and I do not think it is clear. It has been said that the cases show that the military have no discretion when they are called on; that, although the King's Regulations say that they must use a discretion as to what troops they employ and what weapons they use, still they have no discretion whether they will go or not, and that it is for the civil authority to say whether they are to come or not. From that proposition I emphatically dissent.

104. Are you referring to the local military authorities or to the discretion of the War Office?—I was referring primarily to the local military authorities. It would apply to both, but the case almost invariably arises in regard to the local military authorities. There is some countenance, I think, given to the doctrine which I am combating in a sentence in the King's Regulations. They were drawn with these words in them, in paragraph 949, which says that, when a requisition comes from the proper authority, the military authorities will arrange for the despatch of troops and inform the civil authorities who requisition them of their number and of the time at which they may be expected to reach their destination. Now that is ambiguous. That, to my mind, cannot alter the common law, and cannot relieve the military authorities of the obligation which is upon them, and that obligation is to judge for themselves. My view of the law, and it was the view of Lord Bowen also, whom I assisted to frame the paragraph in the Featherstone Report on the subject, which, I think, is quite unambiguous on the point, is that the civil authority has no power to use more force than is necessary, and therefore, has no power to call out the military unless they cannot get on without the military. They ought to do it by civil aid if they can. If they do call out the military, the commanding officer is in this position: an illegal command—an illegal requisition—cannot absolve him from his liability to the general law of the land. Consequently, although the opinion of the civil magistrate is very weighty, and is a thing on which he may place a great deal of importance, it does not absolve him from his liability to the law. If he is summoned from a distance, not knowing the facts, and the civil magistrate says: "You must come and help me to put this disturbance down; I cannot do it with a civil force," he is bound, in my opinion, to go, because he does not know the facts, and he would be acting at his own risk if he did not go, and he would be committing a misdemeanour at common law if he did not give the assistance he is bound to give.

But, supposing he goes and finds there is only a small disturbance, which could be put down by the ordinary police, certainly he would be committing an offence against the law if he intervened. Consequently, he must to some extent exercise his own discretion, notwithstanding the requisition of the magistrate. In nine cases out of ten the magistrate knows much better than the commanding officer can know, but there are cases in which the commanding officer is on the spot and can judge for himself and may think the magistrate is mistaken in his view of the facts. The mere authorization of the magistrate cannot, in point of law, absolve the commanding officer from doing what is illegal, because by the jurisprudence of this country everybody is taken to know the law, the commanding officer as well as anybody else; it is only judges who are allowed to say they have made a mistake about the law. But a commanding officer may say: "The question is not for me, who am at a distance and cannot know what is happening, one of law, but is one of fact; the magistrate is a better judge than I am of the circumstances, and, in point of fact, I accept his view, there being no reason to the contrary, that I ought to intervene." In that case my view is that he would be protected, not because he has not committed what would have been an offence, but that he has not had what is called in the law the *mens rea*—the guilty mind. He could not allege a mistake of law on his part, but he could allege a mistake of fact, into which he had been *bond fide* led by the misjudgment and action of a magistrate. That is his protection, but subject to that he has to judge for himself, like anybody else. I have gone into that at some length, because of the words in the King's Regulations, and I think I know where the mistaken impression on which these words, which are certainly ambiguous, are founded came from. In 1822 there were some very well-known riots in Lancashire, and the military were called to the assistance of the civil authorities in order to enable a warrant to be executed, and after the riots were over—more than 6 months after—an action was brought by a plaintiff called Redford against a Militia officer called Birley, and the case of *Redford v. Birley* is a great case which is reported in the State Trials in the first volume of the new series. *Redford v. Birley* was tried by Mr. Justice Holroyd and a jury, and in Mr. Justice Holroyd's summing up, there occurred certain words which have misled a good many people. Mr. Justice Holroyd said: "The only question here is whether the military were assisting the civil authority in response to a request to do so. That is all the jury have to consider." The head-note of the case—the short summary of facts at the beginning of the report—lays down that the issue that was tried was the question whether the military were rendering assistance in dispersing an unlawful assembly. Of course, if the principles of law which I have stated to the Committee are right, that left open the question whether the military authorities acted wrongly in obeying the requisition of the magistrate, and Mr. Justice Holroyd apparently says, and to anybody who read only the head-note would be taken to rule, that on that what the magistrate said was conclusive. But he did not really say that. The difficulty which has arisen has arisen from the people reading only the head-note of the case (which is, in my view, erroneous) without reading the whole of the report. If you read the report, you will find this: it is very technical, but it is well the Committee should understand what the point was. It was an action of tort—for damage for an assault—and the plea raised what was called the general issue. It was a plea of "not guilty," which was in those days a proper plea to an action of tort, and it enabled you to raise any relevant issue, including an issue of "not guilty by statute." There is an Act of George II, which says that when anybody has been assisting the civil authority in executing a warrant or quelling a riot or generally enforcing the law the action must be brought within six months. If it is not brought within six months, all you have to prove is that you were assisting the civil authority, no matter whether you were wrongfully requisitioned or not. If the action is not brought within 6 months, you have a complete defence if you merely plead you were called out by the civil authority, and were assisting it. That issue was raised in *Redford v. Birley*, and it was that to which Mr. Justice Holroyd referred when he said: "The only question is, were they called out to assist the civil authority, not whether the civil authority were wrong in calling them out, and they wrong in coming." When you get rid of that case, as you do when you read through the proceedings instead of pausing only at the head-note, then you will find the other authorities pretty well consistent. The law to my mind is clear that the soldier is in no different position from anybody else. He must obey the civil authority by coming to its assistance, where it is necessary that the soldier should give assistance to the civil authority, but it must be necessary that he should do so, and excess of force and an excess of display ought not to be used. The soldier is guilty of an offence if he uses that excess, even under the direction of the civil authority, provided he had no such excuse as that he was bound to take the facts, as distinguished from the law, from the civil authority. Now the officer, of course, thereby is placed in an extremely difficult position. He is in the same position as his own man is. If an officer orders his own man to fire unnecessarily, and clearly unnecessarily, the command of the officer does not absolve the private from his duty to obey the common law. On the other hand, under the law of the Army, the private is bound to obey his officer. He is, in other words, in peril of being, on the one hand, tried and shot by a court-martial, and on the other hand, of being tried and hanged by a judge and jury. But in practice it is one of those situations which is really perfectly simple. In 999 out of 1,000 cases it does not arise. People are very sensible in this country. Two principles which may come into conflict have to be reconciled, and they are reconciled by taking the case in the concrete. The result is that, while the commanding officer is bound to pay great respect to the opinion of the civil authority, and on a mere question of fact, when he comes from a distance, to accept it, until he sees that it is obviously wrong, he is not absolved, in law, from his duty not to use more force than is necessary. The result is, I think, that these words.

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Ch. XIII. which are doubtless founded on an impression from a misreading of the case of *Redford v. Birley*, go a little too far, and I propose to modify the language of paragraph 949 of the King's Regulations. I do not think it has misled anybody in practice. We have enforced the other view very strictly because, as I said, the War Office is very reluctant to act. The other day, for instance, at Winchester, the civil authority requisitioned the officer commanding the troops at the depot to bring them up, and the officer did not bring them up, and the civil authority complained to us. I went into the case, and I had not the smallest hesitation in approving the action of the officer commanding, and yet it was said, with some truth, that the paragraph in question says that the military authorities will arrange for the despatch of troops. They did not in that case, because they said, very sensibly: "This must be read in accordance with the common law, and not as inconsistent with it." The Regulations cannot repeal the common law. I agree that should be made more distinct than it is at the present time. That is the statement which I wanted to put before the Committee in order to make the law perfectly clear, as I think it is.

105. *Mr. Middlebrook*.—Am I correct in assuming that the Winchester case was a case where the commanding officer was on the ground, and had the opportunity of judging whether or not necessity existed before calling out his men?—Yes, that was the essence of the case at Winchester.

106. That would differ from the case of a commanding officer at a distance who had no means of judging as to the necessity, and who I assume in your view should respond by taking his men to the locality, and, having arrived, then form his opinion?—Exactly so.

107. *The Chairman*.—Have you concluded now the statement you wished to make?—Yes.

108. *Sir Frederick Banbury*.—I should like to know whether you propose to make an alteration in the King's Regulations which you suggested. You said you were going to make an alteration?—Yes; I propose to revise the King's Regulations, to make it clear that they are in accordance with the common law. They do not purport to alter it, and could not alter it if they purported to alter it. There is no statutory authority that I know of anywhere to alter the common law by the King's Regulations, and I think it should be made perfectly clear that the two do remain consistent.

109. *Mr. Middlebrook*.—Have you any suggestion as to dealing with a difficulty which might arise in a difference of opinion as between the civil authority, on the ground of necessity, and the military authorities on the ground of non-necessity?—I do not think any suggestion is possible for dealing with it. One or other must be wrong, and each acts at his peril. So that the situation is, that while the military commanding officer will of course attach the utmost weight to the civil authority, who is *prima facie* the best judge both of fact and law, he will remember that he is acting at his peril, and, if he forms in his mind a clear reason for dissenting from what he is told to do, he will act on it, but he will remember that there also he is acting at his peril.

110. And you see no alternative but leaving it in that position?—I see no alternative. I have considered the question whether we could codify the common law, and I have looked up the draft code drawn up in 1879 under the auspices of Lord Blackburn, but that code I think probably public opinion would demur to if it were adopted. It, as I read it, gives too great an exemption to the commanding officer from the obligation to observe the common law. It says, in fact, very much what is said in the Regulations, that he has to obey, and that may not be a good thing to lay down.

111. *Mr. Lambton*.—With regard to these King's Regulations, I think you said that that particular paragraph was regarded as mere instruction?—Yes, as mere instruction.

112. Is that regarded so by the military? Would an officer in command of a battalion, for instance, consider it as a mere instruction?—Yes, he has to obey because they are instructions from his superior officers, but he has also to obey the common law, which overrides this paragraph in cases of conflict.

113. That is an impossible position for the poor officer?—The officer is no worse off than anybody else. If you or I were called upon by a magistrate to take part in checking a disturbance with a lethal weapon we should be in an impossible position—we should be bound by the law to obey the magistrate, and bound by the law not to do what was illegal.

114. As far as I make out, you say it down that the law is that every civilian is bound to obey this order when called upon, and that the military may judge for themselves, although they are only in the same position as an ordinary civilian?—No; the civilian must judge for himself, too.

115. But supposing he says he will not go?—Then he is tried before a court, as happened in the case of the *King v. Pinney*, at the time of the Bristol riots.

116. *Mr. Middlebrook*.—Was that a trial before a civil court?—A criminal court.

117. *Sir Frederick Banbury*.—Not a military court?—Certainly not. He would be tried before a civil court, and he would be held liable, it might be, to imprisonment for a misdemeanour for not assisting the authorities. On the other hand, if he used unnecessary violence he would be tried before a similar court and convicted. I should point out that the Army Act is very careful to say that all these provisions are to be read consistently with the general law of the land. It is only a lawful order which the commanding officer is bound to obey. The expression in the King's Regulations is "lawful command."

118. *Mr. Lambton*.—I think the second principle of the common law which you laid down was that they were not to use more force than necessary, and you pointed out that the military may act illegally, even if they march along a street and so make a display of force?—A menacing display.

119. Even if called upon by the magistrate?—It might be so.
 120. If called upon, how can they possibly help making this military display?—You have a very difficult duty to perform, which the law imposes upon you, but you have to steer between the two things. The judges have laid down, over and over again, that a man is on the verge of two precipices, not one, and he has to get along, and he does get along.

121. Then you do not think it necessary to make any alteration in order to save the officer from falling over these precipices?—If you do, you will make the law go over the precipices. It is such an extreme conflict of principles, that I know no way, and I have given a great deal of consideration to it, of defining it better. We did our best in the Featherstone Report, in a passage which is classical now, which comes from the pen of Lord Bowen, who was one of the greatest masters of legal language that this country has ever seen, and no code, I think, could lay it down more clearly.

122. As head of the Army, are you satisfied that the officers under your charge have sufficient protection?—They have as much protection as the civilian. Their duty is a little more difficult, but they have as much protection as the civilian, and where they have a more difficult set of circumstances to deal with, as you are quite right in saying they have, because they must bring their troops up, the law, which is a very sensible institution, recognizes their difficulties, and deals with them accordingly.

123. *Mr. Albert Stanley.*—I do not know that I am perfectly clear about all this, and in order rather to refresh my memory, I want to put a question or two. I understand you to say that the King's Regulations must harmonise with the common law, they cannot in any way override or conflict with it?—Except in certain specific cases where the Army Act says they may, and which cases do not cover dealing with riots. They cover a vast variety of cases, and in some cases dealing with the affairs of the Army they do alter the common law, but not in anything we are dealing with here.

124. I think I understood you to say if when an officer arrives with his troops he finds that the circumstances in his judgment have not warranted the calling out of the military, he has the discretion not to act?—Yes; he commits a crime if he does act in that case.

125. *Mr. Curran.*—In regard to an answer you have just given to Mr. Stanley, the manual of military law, issued from the War Office in 1907, on page 211—and this is the present King's Regulations—gives a summary of the law of riot and insurrection, and in the third paragraph you will find it describes an unlawful assembly thus: "An unlawful assembly is any meeting whatsoever of great numbers of people with such circumstances of terror as cannot but endanger public peace and raise fears of jealousies among the King's subjects, as where great numbers complaining of a common grievance meet together armed in a warlike manner." While we are desirous of having the present Regulations altered, there are some of us here prepared to prove that the present Regulations have been absolutely violated, and that people have deliberately committed murder. I say that with all due respect, that is to say, if these are the Regulations, inasmuch as men and women have been shot down where no unlawful assembly in accordance with this description has taken place at all?—You must know that what you are quoting from is not the King's Regulations, but a manual of military law, which has been compiled to collect the law in a convenient form. The passage you have quoted represents a very authoritative statement of the common law taken from a book of great fame—Hawkins' Pleas of the Crown—but it is a very old book, and "armed in a warlike manner" means a warlike manner in law, and not according to our military notions of it. Coming on with sticks and stones would be in a warlike manner for the purposes of this passage. It must be interpreted in accordance with the fact that it is taken from a book which was written a great many generations ago.

126. Coming back to the King's Regulations, page 64, paragraph 273, refers to duties in aid of the civil power?—I have not the same book. I have the 1908 edition, and you have the 1901 edition.

127. Is there any alteration since?—Yes, because you have the edition of 1901, which has been recast. For instance, my paragraph is 948, and I should have to compare the two. That edition is not in force now.

128. This has been altered?—I cannot tell how much it has been altered unless I compare it, but it is always being recast, and it is in a different place in the book, and probably has been altered.

129. Has the calling out of the military up to now been based upon this paragraph?—Will you read the paragraph?

130. "When troops are called out in aid of the civil power at home, the General Officer Commanding the district, or the officer commanding the station to whom application is made for assistance, is immediately to report the fact by telegraph to the War Office. The officer commanding the unit will report daily in writing to the War Office, as well as to the officer commanding the station from which he has been despatched in the prosecution of the service in which he is employed"—It is now verbally altered, but substantially it is the same.

131. I mentioned the matter to Mr. Troup, of the Home Office. We very much fear that these conditions as laid down here, if they are in operation in the new issue, have not been carried out in regard to four separate cases that have occurred in recent years?—In what respect not carried out?

132. The War Office has not been put in possession of the information required by this paragraph?—I think in all cases, so far as I know, we enforce strictly the substance of what you have read.

133. We are now on the general principle, but let me cite a case. The Lord Mayor, the chief magistrate of Belfast, requisitioned the troops through the Lord

Ch. XIII. Lieutenant, and when the case was raised in the House, as you will remember, Mr. Birrell, the Secretary of State, had to reply to the questions put in regard to the presence of the troops in the streets of Belfast, and on one occasion you undertook to give your views, and your views, if I remember correctly, were that you were not responsible for the presence of the troops in Belfast?—I do not think I said that altogether, because I am responsible to Parliament for everything that soldiers do, but what I said was this: The duty of the officer commanding is, first of all, if he is called upon by the civil authority, to go to the assistance of the civil authority. *Prima facie* that is so. When he gets there he must judge for himself whether he is contravening the law by rendering the assistance, or whether he is only doing his duty. He reports to us immediately afterwards and not before, what he has done, because, if he delayed it by making a report beforehand, and getting our advice, we could not tell. His duty is to act on the spot like any other citizen, but he reports to us without any delay as soon as he can detach himself from his work, and puts us in possession of what has happened, and then we should judge, and we should censure him if we thought he had done wrong, and approve him if we thought he had done right.

134. According to the present Regulations, it is laid down specifically that the riot Act must be read and a certain time elapse before any firing takes place?—No; that is another misconception of the law. The effect of reading the Riot Act is that if the mob does not disperse within an hour, everybody there is guilty of felony, and when people are guilty of felony, and felons will not disperse, or submit to capture, they are liable to be shot, and, therefore, an hour after the Riot Act has been read, it is absolutely lawful, if you cannot stop the felony in any other way, to shoot the people there. That is an additional protection to the military, but it does not prevent the military from facing the possibility of firing on the people before the Act is read. If the people are going about setting fire to houses, and murdering innocent passers-by (I do not say they do do it), it would then be the duty of the military, if the police could not do it, to stop it, even by shooting them down.

135. If the mob was committing through their riotous conduct murder or injury to persons or property, the military are justified in using arms?—They are, and at once, if it cannot be stopped without their intervention.

136. But injury both to persons and property is the only justification for the use of arms, even under the present Regulations?—It is impossible to say that it must be to both persons and property. For instance, one of the most serious offences known to the law is arson, the firing of buildings, which is felony. If you find people committing arson and you cannot stop it in any other way, although they may not be trying to kill anybody, the duty of the military would be, if they could not stop them otherwise, to shoot them down, even though the Riot Act had not been read. The military would be acting at their peril if they did it without the order of a magistrate, but it would be their clear duty, as it would be the duty of any other citizen.

137. We are taking up, perhaps, a partial position in speaking for the section affected in the civil world. What we want to get at is that violence has always broken out after the presence of the military, that is to say, violence of a serious character?—I am with you to this extent, that I think the calling out of the military unnecessarily, very often leads, or may lead, to a breach of the law, by making an unnecessary demonstration which incites and provokes the public, and that is a view on which the War Office not only in my time, but always of late years, have acted consistently and strongly. We hold the military ought not to be called out except in the last resort.

138. Except when the police authorities say they are absolutely unable to cope with the local conditions?—That is it.

139. We had the spectacle in Belfast of the police going on strike because the military went there?—If the police strike, that does not justify the military in not coming up.

140. The military were "blacklegging" by coming?—It may be the fault of the police. They may have broken their contracts for the best of reasons, but still there had to be forces there sufficient to preserve law and order, and if the police will not or do not act, for whatever reason, the military are bound to obey the law. It is not really an individual question; it is a question in which the law of England is consistently and unswervingly Socialistic—the good of the State and of the community is preferred to the good of the individual, and the individual is even to be shot down if his interests conflict with the interest of the State.

141. I take it from your statement this morning, which is very clear and definite, that the department has under consideration the alteration of certain of the King's Regulations?—Yes, to make clear that they are to be read consistently with the law, and not inconsistently, and I agree that those words "will arrange" have given rise to misunderstanding. In my knowledge it has been misunderstood by the soldiers. It says the military authorities "will arrange" for the despatch of the troops whenever they get the requisition. The other day the officer commanding at Winchester refused to "arrange," and he was on the spot and made up his mind that the mayor was wrong, and in my opinion that officer acted with great discretion, and I approved his conduct, although it looks as if he acted inconsistently with the King's Regulations, and I am not sure he did not, but he obeyed the common law.

142. When considering the revising of the Regulations would it be possible to provide for an independent expert to be placed on the spot prior to the military being permitted to be called out?—No. These things, when they happen at all, happen with the utmost suddenness and swiftness, and such an expert as you speak of it would be almost impossible to find. He would have to be a combination of lawyer, soldier, and I do not know what. He would be a very exceptional person, and I doubt whether anybody exists who would be markedly better than the kind of person you generally have on the spot. You have to do the best you can.

143. I quite understand the difficulty; but the point which affects us very seriously in this case is that the local magistrate, or magistrates, in a state of panic, when there is absolutely no reason for it, make immediate applications for military assistance. When people like ourselves are on the spot and could control the people and keep them from creating injury to other persons or property, they get into a panic and make application, and the military come on the spot, which simply prevents the possibility of our keeping the peace. That has occurred in four cases where I have been associated with the business myself?—It has occurred both ways. In the Gordon riots the weakness of the magistrates and the timidity of the authorities led to the sacking of a great part of London; and in the Bristol riots the want of decision of both authorities led to enormous damage being done to the city. No doubt, on the other hand, there are cases, such as you indicate, where people have lost their heads and great mischief has occurred from the premature calling in of the military. All we can do is to lay down in the clearest way what the law is, and give the clearest instructions, to the officers to use their own discretion, and there is a growing tendency in the minds of the average commanding officers against using their troops if it possibly can be avoided. We want the Army to be a popular institution, and not a menace to civil liberty.

144. *Mr. Devlin.*—You say it is not necessary to read the Riot Act before firing takes place in the case of a riot?—It is not necessary; no.

145. But of course the Riot Act is, in 99 cases out of 100, read?—It is for the protection of the magistrate and military—an additional protection.

146. The Riot Act of course could only be heard by a comparatively small number of people who are engaged in a riot?—Yes, not by very many. They generally know it is being read—they are told.

147. Do not you think it would be very desirable when the Riot Act is read, that some bugle should be sounded or some notice given to the people who cannot hear the Riot Act?—They always are informed. I have known of no case of a riot in which it has not been known that the Riot Act is being read, as the magistrate is seen with something in his hand, and they could not hear it if he did read it ever so distinctly, but they see the document read, and they think they will be shot down at once, and the lawful part of them disperse; it is the riotous part that remains.

148. In the recent case of Belfast, two perfectly innocent people were shot down, who did not hear the Riot Act read, and did not know it was read?—It always happens when firing takes place, in my opinion, that the innocent suffer rather than the guilty. When I was sitting on the Featherstone Commission I remember hearing the case of a Sunday school teacher who, one-quarter of a mile off up in the hills, got a bullet through his two thighs; he was merely looking on.

149. For that reason do not you think that before the military fire, and after the Riot Act is read, or even if the Riot Act is not read, when the military authorities make up their minds to order the men to fire, some better intimation ought to be given to the people than simply the holding of a document in the hand of an officer, and a more or less dumb show taking place?—In my experience of these cases and from what I have read of them—of course, I have not seen them, but have investigated a good many—they always know the Riot Act has been read; and, moreover, if you put by law some interval of time between something which is done and the firing, the whole mischief might have occurred that you were there to prevent. For instance, at Featherstone, if the firing had not taken place, the little detachment of soldiers and the mine manager would have been thrown down the pit. We came clearly to that conclusion. It was not the rioting of peaceable men on the spot, but of a lot of rowdies from round about who had congregated.

150. *Mr. Curran.*—It is an opportunity for the class of rowdy that may be there?—That is it. It is an opportunity for evil-disposed people.

151. *Mr. Devlin.*—And the evil-disposed persons generally get away and the innocent people suffer?—I will not say generally, but it does happen. I remember one sturdy miner at Featherstone of a riotous character got shot through the knee, and when they said, "Poor man, we must take you to the doctor," he said, "Not before I know who is going to pay the bill." That is the spirit of them.

152. Do not you think it desirable to use blank cartridge first of all, after the Riot Act is read?—I think it is most undesirable, because the mob get it into their minds that you have nothing but blank cartridge, and they come on and get killed. The military authorities say: "We are here, and if we use our firearms, it is to kill." That is why we demur to being called out except in the last and most perilous necessity. If the mob get the impression we are there with only blank cartridge the result will be bloodshed galore.

153. I do not know if you know about the Riots Commission, which held a sitting in Belfast, under the presidency of Mr. Justice Day. That Commission recommended in its Report: "It has been made abundantly clear by facts that for the primary and all-important duty of preserving order, the rifle is worse than useless, and that its efficiency as a weapon for the restoration of order is very questionable; but on the other hand, in every instance in which the baton was used with judgment (in the riots of 1886) and determination, whether for the preservation or restoration of order, it proved to be a thoroughly reliable and effective weapon." It was further held that "the rifle has the following serious disadvantages: Its range with ball cartridge made it excessively dangerous to inoffensive people, and its use ought, in our opinion, to be absolutely prohibited for police purposes in towns?"—If I may say so, I entirely agree with that, and I think riots should be put down wherever possible by special constables with batons and not by the military. We do not exist for that purpose.

154. When the military authorities were requisitioned for the use of military force in the case of civil disturbance, you stated in Winchester the military authorities refused, and you also said they were quite right in refusing?—In that particular case.

OF. XIII. 155. One is naturally inclined to draw the conclusion that it is not fair to place the entire responsibility upon one man, the Mayor of the city, in determining whether the military authorities ought to be brought out or not. The judgment of the officer in Winchester proved that it is not right to give him full power to requisition the military. Do not you think there ought to be a consultation, so that the individual decision of one man should not be responsible for calling out the military—a consultation of the magistrates or City Council, or some body in a responsible position, as well as the individual who has the power at present?—The difficulty is that while they are consulting Rome might be burning; you have to act at once.

156. You know that the Mayor of a city does consult someone?—He does.

157. He does not act wholly on his own responsibility?—But his chance of stopping the thing must be by immediate and prompt action; you must bear that in mind.

158. It would be as easy to consult half-a-dozen people promptly—perhaps people who had a larger local knowledge than one individual who, perhaps, may be excited?—If you laid that down, it might lead to a delay of one or two hours before he took action, and great misery and loss of life and destruction of property might be the result. I think in these cases, which are all cases of urgency, you ought to leave people free, telling them what the law is and telling them what their duty is.

159. *Mr. Albert Stanley.*—Would not consultation also lead to divided authority and divided responsibility?—Yes. Divided authority is always awkward in this way: It is much better to have one man whom you can hang, if necessary.

160. I take it, if the magistrate or mayor is responsible for calling in the military, an officer becomes responsible if he acts, knowing all the circumstances?—That is it.

161. *Mr. Lambton.*—Supposing the military are there—I am not considering whether they are properly or improperly called out—it is the duty of the officer to look after and protect his own men, as well as to quell the disturbance. Supposing his men are being assaulted by stones, and the lives of his own soldiers are in danger, he may act then independent of any other consideration?—Yes, using just sufficient force to repel the assault. Of course, you cannot judge very closely.

162. *Mr. Albert Stanley.*—The whole of the circumstances of these cases are reported to you?—Yes.

163. Eventually you have a full report of the whole thing?—Yes.

164. And you are able to review exactly what has taken place?—Yes.

165. And you can apportion the responsibility?—Yes.

166. And put on a penalty even?—Yes.

167. *The Chairman.*—I think the Committee will understand from the evidence you have been good enough to give us that first of all you lay the greatest possible stress upon the unwillingness of the War Office and the military authorities to permit the use of military forces except in cases of grievous necessity. You lay great stress upon that, as was the case with Mr. Troup, representing the view of the Home Office the other day, and the Committee may take it that the War Office and the Home Office are entirely in agreement?—Entirely in agreement.

168. The civil and military authority take the same view?—Yes.

169. With regard to the question just raised by Mr. Devlin as to consultation on the part of the civil authorities before calling upon the military to give assistance or to take action, I understand that you also agree with what Mr. Troup laid before us and emphasized strongly, that it is not desirable to diffuse authority in these matters, but that it is better on the whole that one individual should be, as far as possible, responsible?—I am of that opinion. Somebody may have to act promptly and fearlessly, and it would be his duty to do so, and the responsibility must rest with him.

APPENDIX II.

Extract from Report of Committee on Featherstone Riot (Parl. papers 1893-94, C. 7234).

The following summary of the law as to the duties of soldiers in case of riot was given in their Report by the Committee who inquired into the facts of the Featherstone Riots in 1893. The Report gains weight from the fact that the Committee was presided over by Lord Bowen. It will be seen that this statement of the law is in complete accord with the present chapter, on which, indeed, it seems to have been founded:—

“By the law of this country every one is bound to aid in the suppression of riotous assemblages. The degree of force, however, which may be used in their suppression depends on the nature of each riot, for the force used must always be moderated and proportioned to the circumstances of the case and to the end to be attained.

“The taking of life can only be justified by the necessity for protecting persons or property against various forms of violent crime, or by the necessity of dispersing a riotous crowd which is dangerous unless dispersed, or in the case of persons whose conduct has become felonious through disobedience to the provisions of the Riot Act, and who resist the attempt to disperse or apprehend them. The riotous crowd at the Ackton Hall Colliery was one whose danger consisted in its manifest design violently to set fire and do serious damage to the colliery property, and in pursuit of that object to assault those upon the colliery premises. It was a crowd accordingly which threatened serious outrage, amounting to felony, to property and persons, and it became the duty of all peaceable subjects to assist in preventing this. The necessary prevention of such outrage on person and property justifies the guardians of the peace in the employment against a riotous crowd of even deadly weapons.

“Officers and soldiers are under no special privileges and subject to no special responsibilities as regards this principle of the law. A soldier for the purpose

of establishing civil order is only a citizen armed in a particular manner. He cannot because he is a soldier excuse himself if without necessity he takes human life. The duty of magistrates and peace officers to summon or to abstain from summoning the assistance of the military depends in like manner on the necessities of the case. A soldier can only act by using his arms. The weapons he carries are deadly. They cannot be employed at all without danger to life and limb, and, in these days of improved rifles and perfected ammunition, without some risk of injuring distant and possibly innocent bystanders. To call for assistance against rioters from those who can only interpose under such grave conditions ought, of course, to be the last expedient of the civil authorities. But when the call for help is made, and a necessity for assistance from the military has arisen, to refuse such assistance is in law a misdemeanour.

"The whole action of the military when once called in ought, from first to last, to be based on the principle of doing, and doing without fear, that which is absolutely necessary to prevent serious crime, and of exercising all care and skill with regard to what is done. No set of rules exists which governs every instance or defines beforehand every contingency that may arise. One salutary practice is that a magistrate should accompany the troops. The presence of a magistrate on such occasions, although not a legal obligation, is a matter of the highest importance. The military come, it may be, from a distance. They know nothing, probably, of the locality, or of the special circumstances. They find themselves introduced suddenly on a field of action, and they need the counsel of the local justice, who is presumably familiar with the details of the case. But, although the magistrate's presence is of the highest value and moment, his absence does not alter the duty of the soldier, nor ought it to paralyse his conduct, but only to render him doubly careful as to the proper steps to be taken. No officer is justified by English law in standing by and allowing felonious outrage to be committed merely because of a magistrate's absence.

"The question whether, on any occasion, the moment has come for firing upon a mob of rioters depends, as we have said, on the necessities of the case. Such firing, to be lawful, must, in the case of a riot like the present, be necessary to stop or prevent such serious and violent crime as we have alluded to; and it must be conducted without recklessness or negligence. When the need is clear, the soldier's duty is to fire with all reasonable caution, so as to produce no further injury than what is absolutely wanted for the purpose of protecting person and property. An order from the magistrate who is present is required by military regulations, and wisdom and discretion are entirely in favour of the observance of such a practice. But the order of the magistrate has at law no legal effect. Its presence does not justify the firing if the magistrate is wrong. Its absence does not excuse the officer for declining to fire when the necessity exists.

"With the above doctrines of English law the Riot Act does not interfere. Its effect is only to make the failure of a crowd to disperse for a whole hour after the proclamation has been read a felony; and on this ground to afford a statutory justification for dispersing a felonious assemblage, even at the risk of taking life. In the case of the Ackton Hall Colliery, an hour had not elapsed after what is popularly called the reading of the Riot Act, before the military fired. No justification for their firing can therefore be rested on the provisions of the Riot Act itself, the further consideration of which may indeed be here dismissed from the case. But the fact that an hour had not expired since its reading did not incapacitate the troops from acting when outrage had to be prevented. All their common law duty as citizens and soldiers remained in full force. The justification of Captain Barker and his men must stand or fall entirely by the common law. Was what they did necessary, and no more than was necessary, to put a stop to or prevent felonious crime? In doing it did they exercise all ordinary skill and caution, so as to do no more harm than could be reasonably avoided?

"If these two conditions are made out, the fact that innocent people have suffered does not involve the troops in legal responsibility. A guilty ringleader who under such conditions is shot dead, dies by justifiable homicide. An innocent person killed under such conditions, where no negligence has occurred, dies by an accidental death. The legal reason is not that the innocent person has to thank himself for what has happened, for it is conceivable (though not often likely) that he may have been unconscious of any danger and innocent of all imprudence. The reason is that the soldier who fired has done nothing except what was his strict legal duty."

APPENDIX III.

Opinion of Law Officers (Aug. 18th, 1911) on duty of soldiers called upon to assist the police.

A soldier differs from the ordinary citizen in being armed and subject to discipline, but his rights and duties in dealing with crime are precisely the same as those of the ordinary citizen. If the aid of the military has been invoked by the police, and the soldiers find that a situation arises in which prompt action is required, although neither Magistrates nor Police are present or available for consultation, they must act on their own responsibility. They are bound to use such force as is reasonably necessary to protect premises over which they are watching, and to prevent serious crime or riot. But they must not use lethal weapons to prevent or suppress minor disorder or offences of a less serious character, and in no case should they do so if less extreme measures will suffice. Should it be necessary for them to use extreme measures they should, whenever possible, give sufficient warning of their intention

(Signed) RUFUS D. ISAACS.
JOHN SIMON.

CHAPTER XIV.

THE LAWS AND USAGES OF WAR ON LAND.

I. ORIGIN AND NATURE OF THE LAWS AND USAGES OF WAR.

Origin of
the usages
and laws of
war.

1. The laws of war are the rules respecting warfare with which, according to International Law, belligerents and neutrals are bound to comply. In antiquity and in the earlier part of the Middle Ages, no such rules of warfare existed: the practice of warfare was unsparingly cruel and the discretion of the commanders was legally in no way limited. During the latter part of the Middle Ages, however, the influences of Christianity as well as of Chivalry made themselves felt and gradually the practice of warfare became less savage. The present laws of war are the result of a slow and gradual growth. Isolated milder war practices became in the course of time usages, so-called *usus in bello*, manner of warfare, and these usages were developed into legal rules by custom and treaties.

Customary
rules and
written
rules.

2. The laws of war consist therefore partly of customary rules, which have grown up in practice, and partly of written rules, that is, rules which have been purposely agreed upon by the Powers in international treaties. Side by side with these customary and written laws of war there are in existence, and are still growing, usages concerning warfare. While the laws of war are legally binding, usages are not, and the latter can therefore, for sufficient reasons, be disregarded by belligerents. Usages have, however, a tendency gradually to harden into legal rules of warfare, and the greater part of the present laws of war have grown up in that way.

Three
principles
determin-
ing de-
velopment
of laws and
usages of
war.

3. The development of the laws and usages of war is determined by three principles. There is, firstly, the principle that a belligerent is justified in applying any amount and any kind of force which is necessary for the purpose of war: that is, the complete submission of the enemy at the earliest possible moment with the least possible expenditure of men and money. There is, secondly, the principle of humanity, which says that all such kinds and degrees of violence as are not necessary for the purpose of war are not permitted to a belligerent. And there is, thirdly, the principle of chivalry, which demands a certain amount of fairness in offence and defence, and a certain mutual respect between the opposing forces.

Existing
inter-
national
agreements.

4. The existing written agreements which affect the military (a) forces are (b) :—

- (i) The Declaration of St. Petersburg, 1868, renouncing the use, in time of war, of Explosive Projectiles under 400 grammes weight.
- (ii) The two Hague Declarations, 1899, (I) respecting Expanding Bullets, and (II) respecting Asphyxiating Gases.
- (iii) The Geneva Convention of 1906 "for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field"(c).

(a) Such agreements as concern the naval forces only are not enumerated here.

(b) For the text of these agreements see Appendices 1 to 9 to this chapter.

(c) The Geneva Convention, 1864, "for the Amelioration of the Condition of Wounded and Sick in Armies in the Field" is still binding on signatories who have not ratified or acceded to the Convention of 1906.

- (iv) The Hague Conventions, 1907, (I) "Relative to the Opening of Hostilities," (II) "Concerning the Laws and Customs of War on Land" (a), and (III) "Respecting the Rights and Duties of Neutral Powers and Persons in War on Land." — **Ch. XIV.**
- (v) A portion of The Hague Convention, 1907, "Respecting Bombardments by Naval Forces in time of war"; and
- (vi) The Hague Declaration, 1907, "Prohibiting the Discharge of Projectiles and Explosives from Balloons" (b).

5. The above-mentioned Convention "Concerning the Laws and Customs of War on Land," does not pretend to provide a complete code, and cases beyond its scope therefore still remain the subject of customary rules and of usage (c). **Agreements recognized to be incomplete.**

6. The Conventions and Declarations above mentioned are only binding on the Powers which have agreed to them, and have not subsequently denounced them, and then only in a war in which all the belligerent States engaged are parties to them. Similarly, if one Power had not agreed to a particular article of any Convention, that article would not be binding on the other belligerents although they might have contracted to accept it (d). **Which States are bound by the international agreements**

7. It must be emphasized that the rules of International Law apply only to warfare between civilized nations, where both parties understand them and are prepared to carry them out. They do not apply in wars with uncivilized States and tribes, where their place is taken by the discretion of the commander and such rules of justice and humanity as recommend themselves in the particular circumstances of the case (e). **Warfare with uncivilized peoples.**

II. THE OPENING OF HOSTILITIES.

(i) Declaration of War.

8. The "Convention Relative to the Opening of Hostilities," 1907, binds the contracting Powers, in the case of war between two or more of them, not to begin hostilities without previous and explicit warning in the form of a reasoned declaration of war, or of an ultimatum with a conditional declaration of war. There is, how- **Declaration of war obligatory.**

(a) To this Convention are annexed, "Regulations respecting the Laws and Customs of War on Land," consisting of 56 articles. These are referred to in this chapter, for brevity's sake, as The Hague Rules. Thus art. 23 of the Regulations is cited as Hague Rules, 23.

The Hague Convention, 1899, "Concerning the Laws and Customs of War on Land," is still binding on the signatories who have not ratified or acceded to the Convention of 1907.

(b) Officers charged with duties in connection with coast defences and defended ports should, in addition to the above-named Conventions, make themselves acquainted with the contents of the Hague Conventions dealing with the "Laying of Automatic Submarine Contact Mines" and "the Right of Capture in Naval War."

(c) See Preamble to the Convention in Appendix 6.

(d) Paragraphs to this effect are to be found in each Convention and Declaration (except as regards art. 2 of "the Convention Relative to the Opening of Hostilities." See art. 3, para. 2, of the Convention in Appendix 5).

The Conventions above mentioned, and all the Declarations, except that "Prohibiting the Discharge of Projectiles and Explosives from Balloons," have been generally accepted by the Powers, but in some cases with reserve of certain articles. For the signatories, etc., see the list after each Convention and Declaration in Appendices 1-9.

(e) The trend of public opinion on this subject is indicated by the discussions in the Press and by the questions and interpellations in Parliament with regard to the operations in the Sudan, 1898; in the Reichstag respecting those in China in 1900; and in the Chambre des Députés respecting those in Morocco in 1908; and further by the speech of M. Beernaert at the close of the labours of the Second Committee of the Hague Conference, 1907, of which he was President, and which drew up the revised rules in the Convention concerning the Laws and Customs of War on Land. He said, "May these rules be observed, observed in all particulars, better observed than in the past, and even with regard to races whom we have been accustomed to regard as inferior to our own." (Hague Conference, 1907, *Actes*, Vol. III, p. 89.)

Oh. XIV. ever, nothing to impose any period of delay between the issue of notification and the beginning of hostilities. Sudden and unexpected declarations of war for the purpose of surprising an unprepared enemy are in no wise rendered impossible.

Notification of war to neutral States.

9. The signatories are bound when belligerents (a) to notify the existence of a state of war without delay to neutral signatory States, whose responsibilities as neutrals are, as a rule, not engaged until they receive the notification. The omission of a notification on the part of belligerents does not, however, absolve a neutral Power from its responsibilities (b), if it is actually aware of the existence of hostilities.

Importance of the Convention concerning the opening of hostilities.

10. The Convention is valuable from the legal and commercial point of view, especially in a maritime war, since it compels belligerents themselves to fix and announce a definite date which is to be regarded as the beginning of hostilities and after which they are entitled to exercise the rights of belligerency and to exact from neutrals the obligations of neutrality.

(ii) *Treatment of Resident Enemy Subjects.*

General position of the ordinary citizen in war.

11. According to the British view, the first consequence of the existence of a condition of war between two States is that every subject of the one State becomes an enemy to every subject of the other. For it is impossible to sever the subjects from their State, and the outbreak of war between two States cannot but make their subjects enemies. It is, however, a universally recognized rule of International Law that hostilities are restricted to the armed forces of the belligerents (c), and that the ordinary citizens of the contending States, who do not take up arms and who abstain from hostile acts, must be treated leniently, must not be injured in their lives or liberty, except for cause or after due trial, and must not as a rule be deprived of their private property.

Detention of enemy subjects en masse.

12. It is thus no longer considered admissible to detain as prisoners subjects of one of the hostile parties travelling or resident in the country of the other at the time of the outbreak of war (d).

The view that such action is illegal, except in grave emergency, has steadily gained support. Article 5 of the Regulations annexed to the Convention, 1899 (e), concerning the Laws and Customs of War on Land, 1899, permitted the internment of prisoners of war, and it was contended at the Conference of 1907 that the terms of the article afforded a strong argument, *e contrario*, that the internment of enemy subjects not prisoners of war was prohibited. No vote was taken on the point, but this interpretation of the article was generally accepted, subject to the reservation of the right which every State undoubtedly possesses of taking such steps as it may seem necessary for the control of all persons whose presence or conduct appear dangerous to its safety (f).

(a) Opening of Hostilities Convention, art. 2.

(b) Opening of Hostilities Convention, art. 2. See paras. 465 foll. as regards the duties of neutral Powers.

(c) For definition of "armed forces," see para. 20.

(d) The conduct of Napoleon, who in 1803 seized all British subjects travelling in France, and detained all between 18 and 60 years of age, some 10,000 in number, till the peace of 1814, was at the time severely criticized. It must, however, be borne in mind that Napoleon did not claim a right to make civilians prisoners of war. He justified his act as one of reprisals, considering it a violation of international law on the part of England to begin hostilities by capturing two French merchantmen in the bay of Audierne without a formal declaration of war.

(e) Maintained in art. 5 of The Hague Rules.

(f) Hague Conference, 1907, *Actes*, Vol. III, pp. 9, 10, 109, 110.

13. This immunity, however, cannot apply to persons known to be active or reserve officers, or reservists, of the hostile army. For the principle of self-preservation must justify belligerents in refusing to furnish each other with resources that will increase their means of defence (a).

14. The expulsion of subjects of the enemy from the territory of the opposing State is in strict law admissible, but is usually not resorted to unless grave reasons make it advisable (b).

15. Belligerents have in recent years always acted (c) in obedience to this principle. Thus expulsion has been decreed from seaports, fortresses, and defended areas, where special precautions were necessary (d), and from the actual or expected theatres of hostilities (e).

(a) Persons suspected of being in communication with the enemy may without doubt be detained and interned or tried.

At the commencement of the Franco-German War, the Duke de Gramont in his despatch, dated 23rd July, 1870, to the American Minister in Paris (who was in charge of North German interests), stated that the Emperor of the French would not allow the departure of North Germans not past the age of active military service. (Washburne, p. 41.)

Professor Lueder in Holtzendorff, iv, p. 349, fully recognizes the right to detain "aktive Militärs" and "Militärpflichtige": that is, persons belonging to and liable to be called on for duty in the army and navy.

(b) See Hague Conference, 1907, *Actes*, Vol. III, pp. 9, 10, 109, 110.

(c) Thus, during the Crimean War, Russian subjects were allowed to reside without molestation in Great Britain and France. In the American-Spanish War the subjects of both belligerents resident in enemy territory (exclusive of Cuba) were permitted to remain or to withdraw. In the Russo-Japanese War Russian subjects were "as an act of grace," given complete freedom to leave or to remain in Japan, and were assured of the protection of their lives, honour, and property. An important restriction was, however, made:—"In the execution of necessary administrative acts, or of the surveillance ordered, or of other measures taken by the naval and military authorities for military purposes, the Imperial (Japanese) Government admit no restriction, and any limit in part the guarantee given as regards personal liberty, life, and property; and furthermore, may forbid or limit any change of domicile or journeys, if they judge fit.

"Thus those who serve the military interests of their country, or who are guilty of an act against the safety, order, or customs of the Empire, or commit any act harmful to the interests of the Empire . . . can be made the object of special measures in accordance with the laws and ordinances, and may even be ordered to quit the Empire immediately." (Ariga, 43.)

In 1870, German citizens in France were at first, by notice inserted in the *Journal Officiel* of the 20th July, permitted to continue their residence as long as their conduct did not give any legitimate cause of complaint. But on the 12th August the French Government decided that with certain exceptions they must quit France. Exceptions were made in favour of persons recommended by respectable citizens of the neighbourhood. The decision was made partly because of the hostility of the populace towards Germans and of the difficulty of providing for their safety. It appears to have been modified, for on 28th August, General Trochu, the Governor of Paris, ordered every German in Paris and in the Department of the Seine to leave France or retire beyond the Loire within three days. Even this order was not effective, for foreigners in France not being registered, it was difficult to secure their departure. At the close of the siege of Paris, the American Minister reported that he had 2,900 Germans under his protection in the city. (Washburne, p. 387.)

German authorities admit the complete right of the French Government to act as they did. (Holtzendorff, IV, p. 350.)

The German States in 1870 did not order the expulsion *en masse* of the French who were resident in their territories; there were, however, only 2,000 to 3,000 scattered over twenty-five States.

(d) During the Crimean war many British subjects were expelled from the Russian seaports of Cronstadt, Odessa, and Sebastopol.

Previous to the outbreak of hostilities in 1904, the Commandant of Vladivostok declared officially that he was authorized to proclaim a state of siege, and that, when declared, all Japanese must leave within three days. (Ariga, pp. 363, 364.)

On 12th February, 1905, the Japanese military authorities at Port Arthur declared that the commander-in-chief intended to compel all foreigners to leave that fortress as soon as the preparations for its defence were complete. "It was a measure of precaution for the preservation of military secrets." This order was enforced except as regards twenty persons, agents of German, American, and Danish commercial firms, to whom it was found convenient to grant permission to remain. (Ariga, pp. 363, 364.)

(e) It has already been pointed out in footnote (c), above, that on the 28th August, 1870, every German in Paris and the Department of the Seine was ordered to leave.

In 1904-5, although Japanese subjects were permitted to remain in European Russia, they were required to leave Manchuria and certain parts of Asiatic Russia.

Ch. XIV. 16. Should the expulsion of any person be ordered he should be given such reasonable notice as may be consistent with public safety, in order to make arrangements for the custody of his property and preparations for his departure.

III.—THE ARMED FORCES OF THE BELLIGERENTS.

(i) *The Division of the Enemy Population into Two Classes.*

The armed forces and the peaceful population.

17. The division of the enemy population into two classes, the armed forces and the peaceful population, has already been mentioned. Both these classes have distinct privileges, duties, and disabilities. It is one of the purposes of the laws of war to ensure that an individual must definitely choose to belong to one class or the other, and shall not be permitted to enjoy the privileges of both. In particular, that an individual shall not be allowed to kill or wound members of the army of the opposed nation and subsequently, if captured or in danger of life, to pretend to be a peaceful citizen.

Rights and privileges of armed forces.

18. The forces of a belligerent have the right to withstand the enemy by all the methods not specially forbidden by the laws of war (a); but they may be killed or injured as long as they continue to resist. Once, however, they cease resistance they have a right to humane and honourable treatment as prisoners of war. Their lives are spared, and it is the business of the captor to protect and maintain them (b).

Rights and privileges of the peaceful population.

19. Peaceful inhabitants, on the other hand, may not be killed or wounded, nor as a rule taken prisoners, and they have other privileges, to which reference has already been made (c). If, however, they make an attempt to commit hostile acts, they are not entitled to the rights of armed forces, and are liable to execution as war criminals (d).

(ii) *The Armed Forces.*

Who are comprised under the term armed forces.

20. Under the term armed forces are comprised :—

- (i) The army: this includes militia or volunteer corps (e) in countries where they constitute the national forces or form part of them (f). The members of the army are entitled to recognition as belligerent forces whether they have joined voluntarily or have been compelled to do so by State law, whether they are nationals of the enemy or of a neutral State (g), and whether they joined before or after the declaration of war.
- (ii) Militia and volunteer corps which do not ordinarily form part of the army, but have been raised, possibly, for the duration of the war or even for the execution of some special operation. These irregular troops must, however, fulfil all of the following conditions :—
 - (a) Be commanded by a person responsible for his subordinates ;
 - (b) Have a fixed distinctive sign recognizable at a distance ;

(a) See para. 39 foll.

(b) See para. 54.

(c) See para. 11 above. For further discussion of the relations between an invader and the population see para. 340 foll., and 405 foll.

(d) See para. 441.

(e) e.g., the Territorial Force.

(f) Hague Rules, 1.

(g) e.g., the Garibaldiens who fought for France in 1870-1 and the various foreigners who assisted the Boers in 1899-1902.

- (c) Carry arms openly ; and
- (d) Conduct their operations in accordance with the laws and customs of war (a).
- (iii) The inhabitants of a territory not under occupation (b) who, on the approach of an enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves as laid down in (i) or (ii), provided they conform to conditions (c) and (d) laid down above for irregular combatants (c).

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21. Both combatant and non-combatant members of the armed forces are included in the above categories (d). The conditions, however, under which irregular corps obtain the rights of the armed forces require some explanation.

Non-combatants.

(iii) *The conditions required of Irregular Combatants.*

22. The first condition, "to be commanded by a person responsible for his subordinates," is completely fulfilled if the commander of the corps is regularly or temporarily commissioned as an officer or is a person of position and authority, or if the members are provided with certificates or badges granted by the Government of the State to show they are officers, N.C.Os., or soldiers, so that there may be no doubt that they are not partisans acting on their own responsibility (e). State recognition, however, is not essential, and an organization may be formed spontaneously and elect its own officers (f).

Responsible commander.

23. The second condition, relative to the fixed distinctive sign recognizable at a distance, would be satisfied by the wearing of military uniform, but less than complete uniform will suffice. The distance at which the sign should be visible is left vague, but it is reasonable to expect that the silhouette of an irregular combatant in the position of standing against the skyline should be at once distinguishable from the outline of a peaceful inhabitant, and this by the naked eye of ordinary individuals, at a distance at which the form of an individual can be determined (g). As encounters now take place at ranges at which it is impossible to distinguish the colour or the cut of clothing, it would seem desirable to provide irregulars with a helmet, slouch hat, or forage cap, as being completely different in outline from the ordinary civilian headdress.

Distinctive sign.

24. It may, however, be objected that a headdress does not legally fulfil the condition that the sign must be fixed. Something

(a) Hague Rules, 1.

(b) For definition of "occupied territory," see para. 341 below.

(c) Hague Rules, 2.

(d) Hague Rules. See para. 58, footnote (c), below, as regards non-combatants.

(e) An identity disc would appear to be sufficient. As N.C.Os. and men may be captured alone without a responsible commander being actually present with them, it would seem desirable to provide them with an identity card or "small book," if they have no disc, authenticated by the orderly room stamp or commander's signature.

(f) In 1870 the Germans issued the following notice :—

"Every prisoner who claims to be treated as a prisoner of war must prove his status as a French soldier by the production of an order issued by a competent authority and addressed to himself showing that he has been summoned to the colours and is borne on the rolls of a military unit raised by the French Government." (*Kriegsbrauch*, p. 6.) The German Great General Staff would appear to refuse recognition to "individual irregulars or to small bands," unless they can prove that they have State authorization. (*Kriegsbrauch*, p. 5.) The Hague Rules now make such conditions unlawful, for there is no mention in them of State authorization.

(g) The Japanese authorities informed the Russians in 1904 that the sign should be "easily distinguishable by the naked eye of ordinary people." (Ariga, 85, 88.) *Kriegsbrauch*, p. 7, demands that it should be plainly visible at long (*weite*) range.

Ch. XIV. of the nature of a badge sewn on the clothing should therefore be worn in addition (a).

25. It is not necessary to inform the enemy of the distinctive mark adopted to fulfil the second condition (b), although to avoid misunderstandings it may be convenient to do so (c).

Carrying
of arms
openly.

26. The third condition provides that irregular combatants shall carry arms openly. They may therefore be refused the rights of the armed forces if it is found that their sole arm is a pistol, hand-grenade, or dagger concealed about the person, or a sword stick, or similar weapon, or if it is found that they have hidden their arms on the approach of the enemy.

Compliance
with the
laws of war.

27. The fourth condition requires that irregular corps shall conduct their operations in accordance with the laws and customs of war. It is especially necessary that they should be warned against employment of treachery, maltreatment of prisoners, wounded, and dead, improper conduct towards flags of truce, pillage and unnecessary violence and destruction.

28. It is taken for granted that all members of the army (d) as a matter of course will comply with the four conditions; should they, however, fail in this respect (e) they are liable to lose their special privileges of armed forces.

(iv.) *The Levée en Masse.*

Conditions
under
which an
armed
rising of
inhabitants
is recog-
nized.

29. A rising of "the inhabitants of a territory not under occupation who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to

(a) This might take the form of a device sewn to, or embroidered on the breast of the coat, or uniform buttons on the coat, or a coloured stripe on the trousers, or two coloured arm-bands, or some similar indication. It has been suggested that one white or distinctive-coloured sleeve to the coat, or a sash sewn across the coat, would largely satisfy all the conditions. There appear to be objections to the use of a single red arm-band, as it might be mistaken for the brassard of the Geneva Convention, or the arm-band used in some armies as the badge of neutral attachés, newspaper correspondents, and others.

The following historical examples of distinctive marks are of interest:—

In 1870 the un-uniformed French *Garde Nationale Mobile*, and the *franc-tireurs* wore blue or grey blouses with a red arm-band (in some cases a red shoulder strap); the former in addition had *képis*. The German Government did not consider the blouse and arm-band sufficiently distinctive. The following is the translation of part of the telegram of the German Chancellor communicated by the medium of the American Minister to the French authorities:—

"The blue blouse is the national costume, the brassard on the arm is only distinguishable at a short distance, and can be taken off or replaced instantly, with the result that it becomes impossible for the Prussian troops to distinguish the individuals from whom they have to expect acts of hostility. In consequence, those not recognizable as soldiers on all occasions, and at the necessary distance, who kill or wound Prussians, will be tried by Martial Law." (Guelle I, p. 77.) (*Kriegsbrauch*, p. 7.)

In 1904 certain Japanese civilians who were organized into a volunteer corps to assist in the defence of Ping-yang wore white helmets, European clothes (amid a population wearing Chinese), and a flower embroidered in red thread on their coats. (Ariga, p. 82.)

The Russian volunteers on the Island of Saghalien had no military uniform, and as distinctive signs had on their caps a cross or a cross with the letters M.P. (*Manchuriskii Polk* (Manchurian Regiment)), on their sleeves a red band about two-thirds of an inch broad, and a red edging to their greatcoats and caps. (Ariga, 85, 96.) It is not clear from Professor Ariga's work whether these signs satisfied the Japanese. Certain irregular combatants taken prisoners by them were shot. (Ariga, p. 87.)

(b) Hague Conference, 1907, *Actes*, Vol. III, pp. 20, 104-106.

(c) In July, 1904, the Russian Government informed the Japanese Minister at Berlin, through the intermediary of the American Chargé d'Affaires at St. Petersburg, of the distinct signs which were worn by the "volunteers" in Saghalien. (See last paragraph of note to para. 24.)

(d) As defined in para. 20 above.

(e) For example, by concealing their uniform under civilian clothes, or using civilian clothes without a distinctive mark owing to their uniforms having worn out. The use of the enemy's uniform is dealt with in para. 152, below.

organize themselves," is spoken of as a *levée en masse*. Such inhabitants are recognized as having the privileges of belligerent forces if they fulfil the last two conditions laid down for irregulars; these are: to carry arms openly and to conduct their operations in accordance with the laws and customs of war. They are exempt from the obligations of being under the command of a responsible commander and wearing a distinctive sign. It must, however, be emphasized that the inhabitants of a territory already invaded by the enemy who rise in arms do not enjoy the privileges of belligerent forces (a).

30. The rules which affect a *levée en masse* should be generously interpreted. The first duty of a citizen is to defend his country, and provided he does so loyally he should not be treated as a marauder or criminal (b).

31. The word territory in this relation is not intended to mean the whole extent of a belligerent State, but refers to any part of it which is not yet invaded.

32. Thus if an enemy approaches a town or village with the purpose of seizing it, the inhabitants, if they defend it, are entitled to the rights of regular combatants, as a *levée en masse*, although they wear no distinctive mark; in this case all the inhabitants of a town may be considered legitimate enemies until the town is taken (c).

33. Should some inhabitants of a locality take part in the defence, it might be justifiable to treat all the males of a military age as prisoners of war.

34. The privileges granted to irregular combatants by Article I of The Hague Rules (d), apply whether these combatants are acting in immediate combination with a regular army or separate from it.

(a) Hague Rules, 2.

The South African War of 1899-1902 affords an example of the first two conditions being dispensed with.

(b) Considerable difficulty was experienced at The Hague Conference, 1899, in obtaining the adoption of Article 2 of the Rules respecting the Laws and Customs of War on Land. The countries which had large armies raised by universal service insisted that only the persons referred to in art. 1 should be considered as belonging to the belligerent forces; they drew attention to the fact that if all the inhabitants were permitted to fight without any conditions, art. 1, which requires four essential conditions for the quality of belligerent, became entirely useless; that the invading army would have no means of distinguishing peaceful inhabitants from combatants, and thereby might be led to consider all inhabitants as active enemies and to attack them. The small States, however, replied that although they were not compelled to keep up large armies based on a system of conscription they had nevertheless the right to defend their countries in case of need, and then they might have recourse to a *levée en masse*.

A compromise was made and is embodied in art. 2, which authorizes the *levée en masse* of the population of a territory not occupied, on the enemy's approach. (See Procès-verbaux in "Conférence Internationale de la Paix. Ministère des Affaires Étrangères, La Haye, 1899," p. 51.)

(c) Professor Ariga gives as an example the defence of Ying-kou on the 12th February, 1905, in which only 70 of the 400 defenders were Japanese soldiers, the remainder being post officials, military telegraphists, settlers and men of the commercial classes; they had time to organize themselves, but had no distinctive mark. (Ariga, pp. 82-91.)

In some terms of surrender, e.g., those of Metz and Port Arthur, the volunteers from among the inhabitants who had assisted the armed forces have been specially mentioned as included, in order, no doubt, to avoid any misunderstanding.

In September, 1870, the Germans shot certain inhabitants of Bazeilles who had taken an active part in the defence of the village during the battle of Sedan on the ground that they had offered violence to Bavarian soldiers, and had fired from the cellars of houses already captured, sparing neither wounded nor stretcher bearers (Official Account of Franco-Prussian War, 1870-1, part 1, vol. 2, p. 316), that is for infringement of the laws and customs of war. The Japanese shot twenty-five inhabitants of Vladimirovka who were taken prisoners armed but without any distinctive sign to show they were combatants. In this case the reason alleged was that they were not inhabitants defending their hearths, property and country, but convicts and vagabonds ignorant of the laws of war. (Ariga, p. 87.)

(d) See para. 20 (ii), above.

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Ch. XIV. 35. It is necessary to remember that inhabitants who have legitimately taken up arms cannot afterwards change their status back to that of peaceful inhabitants. Even if they lay down their arms and return to their peaceful avocations, they may be made prisoners of war.

Permanent character of belligerent status.

Fugitives and deserters.

36. Deserters and subjects of a belligerent fighting in the enemy's ranks are traitors to their country, and are, when captured, liable to the penalty for treason. They cannot be regarded as enemies in the military sense of the term and cannot claim the privileges of the members of the armed force of the enemy, but terms may be specially made for them.

Duty of officers as regards legal status of combatants.

37. It is not, however, for officers or soldiers in determining their conduct towards a disarmed enemy to occupy themselves with his qualifications as a belligerent. Whether he belongs to the regular army or to an irregular corps, is an inhabitant or a deserter, their duty is the same: they are responsible for his person and must leave the decision of his fate to competent authority. No law authorizes them to have him shot without trial, and international law forbids summary execution absolutely. If his character as a member of the armed forces is contested, he should be sent before a court for examination of the question.

(v.) *Coloured Troops.*

38. Troops formed of coloured individuals belonging to savage tribes and barbarous races should not be employed in a war between civilized States. The enrolling, however, of individuals belonging to civilized coloured races and the employment of whole regiments of disciplined coloured soldiers (a) is not forbidden.

IV.—THE MEANS OF CARRYING ON WAR.

Limitation of means of carrying on war.

39. The first principle of war is that the enemy's powers of resistance must be weakened and destroyed. The means that may be employed to inflict injury on him are not, however, unlimited (b). They are in practice definitely restricted by international conventions and declarations, and also by the customary rules of warfare. And, moreover, there are the dictates of religion, morality, civilization, and chivalry which ought to be obeyed. The means include both force and stratagem.

(i.) *The Means of Carrying on War by Force.*

General means of carrying on war by force.

40. The most important powers of resistance possessed by an enemy, in addition to the general resources of his country, are furnished by his armed forces with their military stores and apparatus, and his permanent or improvised fortresses. The means of reducing these powers of resistance are:—Killing and disabling the enemy combatants; constraining them by defeat or exhaustion to surrender, that is taking them prisoners; and the investment, bombardment, or siege of the fortresses. How far an invader is allowed to damage, destroy, or appropriate property and injure the general resources of a country, will be considered later (c).

(a) *E.g.*, such troops as the Indian Army, the African troops of the French Army, and the Negro regiments of the United States Army.

(b) Hague Rules, 22. "Belligerents have not an unlimited right as to the choice of means of injuring the enemy."

(c) See paras. 405 et seq.

(i.) A.—*Killing and Disabling the Enemy Combatants.*

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41. The international agreements limiting the means of destruction of enemy combatants are contained, apart from Article 23 of The Hague Rules, in four Declarations by which the contracting parties, of which Great Britain is one, engage :—

International agreements.

- (i) "to renounce in case of war amongst themselves the employment by their military and naval forces of any projectile of a weight below 400 grammes (approximately 14 oz.), which is either explosive or charged with fulminating or inflammable substances"; (a).
- (ii) "to abstain from the use of bullets with a hard envelope which does not entirely cover the core, or is pierced with incisions"; (b).
- (iii) "to abstain from the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases"; (c).
- (iv) "to prohibit, for a period extending to the close of the Third Peace Conference (d), the discharge of projectiles and explosives from balloons or by other new methods of a similar nature"; (e).

42. It is expressly forbidden to employ arms, projectiles or material calculated to cause unnecessary suffering (f). Under this heading might be included such weapons as lances with a barbed head, irregularly-shaped bullets, projectiles filled with broken glass, and the like (g); also the scoring of the surface of bullets, the filing off the end of their hard case, and smearing on them any substance likely to inflame a wound. The prohibition is not, however, intended to apply to the use of explosives contained in mines, aerial torpedoes, or hand-grenades.

Prohibited means of killing.

Arms which cause unnecessary suffering.

43. The use of poison and poisoned weapons is forbidden (h). By analogy this prohibition has been extended to the use of means calculated to spread contagious diseases.

Poison, &c.

44. The deliberate contamination of sources of water by throwing into them corpses or dead animals is a practice now confined to savage tribes. There is, however, no rule to prevent measures being taken to dry up springs, and to divert rivers and aqueducts.

45. Train wrecking, and setting on fire camps or military depôts, are legitimate means of injuring the enemy when carried out by members of the armed forces.

46. Assassination, and the killing and wounding by treachery of individuals belonging to the hostile nation or army, are not

Assassination.

(a) Declaration of St. Petersburg, 1868. For a list of parties to the Declaration, see Appendix 1.

(b) Hague Declaration, 1899. For a list of parties to the Declaration, see Appendix 2.

(c) Hague Declaration, 1899. For a list of parties to the Declaration, see Appendix 3.

(d) That is until the next Peace Conference has completed its labours.

(e) Hague Declaration, 1907. For a list of parties to the Declaration, see Appendix 9. It may be remarked here that hardly any of the Great Powers have signed this Declaration; it is, therefore, practically without force.

(f) Hague Rules, 23 (e).

(g) The use of soft-nosed and explosive bullets is already provided against in the Declaration referred to in para. 41 (ii) above. According to the French *Manuel*, p. 14, it must not be accounted reprehensible if irregular troops raised in haste to oppose an invader should in default of regulation ammunition and bayonets make use of small shot and the cutting tools which are available in the country. This, however, goes too far, since "cutting tools," include saws and the like which would cause "unnecessary suffering," and are therefore forbidden.

(h) Hague Rules, 23 (a).

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Ch. XIV. lawful acts of war, (a) and the perpetrator of such an act has no claim to be treated as a combatant, but should be put on his trial as a war criminal (b). Measures should be taken to prevent such an act from being successful in case information with regard to it is forthcoming (c).

Outlawry. 47. As a consequence of the prohibition of assassination, the proscription or outlawing of any enemy, or the putting a price on an enemy's head, or any offer for an enemy "dead or alive" is not permitted.

Quarter. 48. It is forbidden to declare that no quarter will be given (d).

49. It is hardly necessary to state that the custom is now obsolete by which quarter could be refused to the garrison of a fortress carried by assault, to the defenders of an unfortified place who did not surrender when artillery was brought against it, and to a weak garrison who obstinately and uselessly persevered in defending a fortified place against overwhelming forces.

Killing of surrendered combatants. 50. It is forbidden to kill or wound an enemy who having laid down his arms, or having no longer means of defence, has surrendered at discretion (e).

51. This prohibition is clear and distinct; there is no question of the moment up to which acts of violence may be continued without disintitling the enemy to be ultimately admitted to the benefit of quarter. War is for the purpose of overcoming armed resistance, and no vengeance can be taken because an individual has done his duty to the last but escaped injury (f).

Infractions of laws of war.

52. Few wars have occurred without both belligerents making mutual charges of breaches of the laws of war (g). Such charges as have been proved have almost invariably been shown to have been the deeds of subordinates who have acted through ignorance or excess of zeal; they have more and more rarely been deliberate acts. Care must therefore be taken that all ranks are acquainted with the laws of war and that they endeavour to observe them.

53. A belligerent is not justified in at once dispensing with obedience to the laws of war on account of their suspected or ascertained violation on the part of his adversary (g).

(i.) B.—*The Taking of Prisoners (h).*

Changes in treatment of prisoners.

54. Few of the customs of war have undergone greater changes than those relating to the treatment of prisoners. In antiquity war captives were killed, or at best enslaved; in the Middle Ages they were imprisoned and held to ransom; it was only in the seventeenth century that they began to be deemed prisoners of the State

(a) Hague Rules, 23 (b). For instance, it would be treachery for a soldier to sham that he was wounded or dead, or to pretend that he had surrendered, and afterwards to open fire when the enemy came up to him.

(b) See para. 441 *et seq.* below.

(c) In 1806 an offer to assassinate Napoleon was made to the British Government by a foreigner. The man was detained (the law not permitting of his punishment) and the French Minister of Foreign Affairs was informed.

(d) Hague Rules, 23 (d). Formerly it was held that the general duty to give quarter did not protect an enemy who had personally violated the laws of war, who had declared his intention of refusing to grant quarter, or of violating those laws in any grave manner, or whose government or commander had done acts which justified reprisals. (See paras. 452-460.) The American "Instructions" recognized the refusal of quarter in certain circumstances (arts. 60-63).

(e) Hague Rules, 23 (e).

(f) An individual who refuses to cease firing, after a general surrender has been made by his commander, forfeits his privileges as a combatant.

(g) For further examination of this question see *post* para. 435 *et seq.*, "Means of securing legitimate warfare."

(h) The British instructions with regard to prisoners of war are contained in "General rules for prisoners of war interned in the United Kingdom."

and not the property of the individual captors. Even during the wars of the nineteenth century they were often subjected to cruel neglect, unnecessary suffering, and unjustifiable indignities.

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55. The written laws regarding prisoners of war are contained in Articles 4 to 20 of The Hague Rules, in certain paragraphs of the Geneva Convention, and in the Convention concerning the Rights and Duties of Neutral Powers and Persons in war on land.

The persons who may claim the privileges of prisoners of war.

56. Every member of the armed forces, if he falls into the hands of the enemy, has a claim to be treated as a prisoner of war, unless he has committed a war crime (a).

57. It is expressly enacted that followers of armies—such as newspaper correspondents, reporters, sutlers, and contractors—who are captured and retained, can claim to be treated as prisoners of war, provided they can produce a certificate from the military authorities of the army they are accompanying (b).

Followers.

58. In addition to the members of the belligerent forces and the civilians who accompany armies by permission of the military authorities, the following are liable to be made prisoners:—

Civilian.

- (i) The Sovereign and the male members of the royal family, the head of a Republican State, and the Ministers who direct the policy of a State, although as individuals they may not belong to the army.
- (ii) Civil officials and diplomatic agents attached to the Army.
- (iii) Persons whose activity is of service in the war:—such as higher officials, diplomatic agents, couriers, guides, etc.; also all persons who being at liberty may be harmful to the opposing State:—such as prominent and influential political leaders, journalists, local authorities, clergymen, and teachers, in case they incite the population to resistance (c).
- (iv) The mass of the population of a province who rise to defend their territory before it is invaded by the enemy (d).

59. In some cases it may only be found necessary to detain such persons for a period.

60. Although The Hague Rules do not contain anything regarding the treatment of private enemy individuals and enemy officials whom a belligerent thinks it necessary to make prisoners, it is evident that they also can claim all the privileges of prisoners of war. Such individuals are not civil prisoners; they are taken into captivity for military reasons, and they are therefore prisoners of war.

61. It is contrary to usage to take prisoners military attachés or diplomatic agents of neutral Powers, who accompany an army in the field, or are found in a captured fortress, provided they are in possession of papers of identification and take no part in the hostilities. They may, however, be ordered out of the theatre

Special treatment of military attachés and diplomatic agents of neutral Powers.

(a) See para. 441 *et seq.*

(b) Hague Rules, 13. Without such certificate they are liable, if found in the theatre of war, to arrest as suspected persons.

(c) As regards civilian inhabitants of occupied territory who are requisitioned, impressed, or hired to act as transport drivers, as labourers to construct fortifications or siege works, and in similar capacities which assist the army, or who voluntarily perform such services, and who are captured whilst so assisting: the enemy may detain them temporarily, requisition their services (see, however, paras. 388-91), or release them as he thinks fit. But he may not retain them as prisoners of war (see para. 207 (i), last three lines). There is of course no necessity for such civilians to wear a "fixed distinctive sign, recognizable at a distance" (see para. 22).

(d) See para. 29 above.

Ch. XIV. of war, and if necessary, handed over by the capturing Power to the Ministers of their respective countries (a).

Wounded and sick.

62. Wounded and sick when captured are prisoners (b), but the members of the medical personnel are not as a rule made prisoners (c).

Chaplains.

63. Chaplains attached to armies, so long as they confine themselves to their spiritual duties, cannot be made prisoners of war (d); if they are captured they must be released under conditions similar to those applicable to the medical personnel.

Deserters from the enemy.

64. Deserters from the enemy should be treated as prisoners of war, unless special circumstances render it desirable to liberate them. Deserters and subjects of a belligerent captured in the ranks of the enemy have, as already pointed out, no right to claim treatment as prisoners of war, or the benefit of the laws of war.

Prisoners who enter neutral territory.

65. Prisoners of war, even if sick or wounded, who escape into the territory of a neutral Power, or are brought into it by troops taking refuge in such territory, do not necessarily acquire their complete liberty (e).

General position of prisoners.

66. Prisoners of war are in the power of the enemy Government, and not of the individuals or units capturing them, and they must be humanely treated (f).

Right of interrogation.

67. Every prisoner is bound to give, if questioned on the subject, his true name and rank. In case he refuses to do so, he is liable to have the privileges curtailed which are due to prisoners of his class (g).

68. The right of interrogation is not limited to name and rank, yet a prisoner is not bound to reply to other questions. It is permissible to employ every means, provided they are humane and not compulsive, to obtain all the information possible from prisoners with regard to the numbers, movements, and location of the enemy. A prisoner cannot, however, be punished for giving false information about his own army (h).

Private property of prisoners.

69. According to The Hague Rules all personal belongings of prisoners of war, except arms, horses, and military papers, remain their property (i). In practice personal belongings are understood to include military uniform, clothing and kit required for personal use, although technically they may be the property of Government (j).

(a) A British naval attaché and two American military attachés with the Russian forces captured by the Japanese at Mukden were, after a report had been made to the Minister of Foreign Affairs, Tokio, sent to Japan and handed over to the Ministers of their respective countries. (Ariga, pp. 122, 123.)

(b) Geneva Convention, art. 2.

(c) See para. 184 *et seq.*

(d) Geneva Convention, art. 9.

(e) See para. 490 *et seq.*, for the discussion of this situation.

(f) Hague Rules, 4.

(g) Hague Rules, 9.

(h) The shooting of a prisoner for such reason is, as *Kriegsbrauch*, p. 16, says, "cowardly murder."

(i) Hague Rules, 4. According to the opinions expressed at The Hague Conference, 1907, *Actes*, Vol. III, pp. 20, 107, field glasses, range finders, maps, bicycles, and other objects used for military purposes, and means of transport also remain their property. See, however, para. 71. Nothing was said about saddlery and harness, but they would naturally follow the fate of the horse to which they belong, whilst ammunition should seem to be included under "arms." Prisoners may of course be called upon to prove that the field glasses, etc., are really their private property.

(j) After the battle of the Sha Ho some Japanese soldiers compelled Russian prisoners to give up good boots and take their worn out ones in exchange. This was admitted to be irregular, but was excused on the ground that the men did not take the boots to enrich themselves, but in order better to serve their country. (Ariga, p. 161.) Similar stories are narrated of the Germans in 1870-1. (See Letters of Major von Kretschmann, Latreille's French translation, p. 382.)

70. This rule does not, however, authorize prisoners to retain large sums of money, or articles which might facilitate their escape. Such money and articles should be taken from them against receipt and returned at the end of the war (a). Oh. XIV.
Money.

71. This rule, further, does not compel the captor to be responsible for such personal belongings of prisoners as they are unable to take with them (b). Unportable
property.

72. Everything that is captured with prisoners, and is not included under the term "personal belongings," becomes the property of the belligerent Government, and not of the individuals or units capturing them (c). Booty.

73. A commander in arranging the terms of surrender may in his discretion permit prisoners to keep certain things otherwise liable to capture. Thus, officers are frequently allowed to retain their swords. Indul-
gences as
regards
property.

74. Prisoners of war attempting to escape may be fired upon (d). Escape of
prisoners.

75. Escaped prisoners who are retaken before being able to rejoin their own army, or before leaving the territory occupied by the army which captured them, are liable to disciplinary punishment (e).

76. The words "disciplinary punishment" are intended to exclude a sentence of death. For conspiracy, mutiny, revolt, or insubordination, prisoners of war are, however, liable, as will be seen below (f), to the same punishment as persons subject to military law in the army which captured them (g). Discipli-
nary pun-
ishment.

77. Punishment for attempted escape usually consists in curtailment of the measure of liberty usually allowed to prisoners, or even of detention. If escapes are of frequent occurrence it is permitted to anticipate further attempts by increasing the measures of security (h). Punish-
ment for
attempted
escape.

78. Persons who after a successful escape are again taken prisoners of war, are not liable to any punishment on account of their previous escape (i).

79. Prisoners of war may be shot down if they resist their guard or attempt to assist their own army in any way (j), or if, as already mentioned, they attempt to escape. Further, they may Execution
of
prisoners.

(a) Prisoners should always be called upon to prove ownership if it is suspected that the large sums of money or other objects in their possession are in reality government property. Their private property is liable to requisition in the same manner as that of other persons (see para. 405 *et seq.*).

(b) The Japanese authorities at the capitulation of Port Arthur declined to be responsible for property of the Russian officers. "It was simply understood that the baggage not taken away would be confided to Russians remaining in the hospitals or to the ordinary inhabitants." (Ariga, p. 325.)

(c) See para. 405 and footnote, below.

(d) Hague Conference, 1899, p. 144. A previous summons to halt and to surrender should be given if possible.

(e) Hague Rules, 8.

(f) See para. 85.

(g) Hague Conference, 1899, pp. 143-4.

(h) In the Franco-German War, 1870-1, the French officers who were prisoners were at first permitted to retain their arms and to have a considerable liberty of movement on condition of not leaving the locality assigned as their place of residence. The Prussian Government, alleging the frequency of escapes, did not continue these indulgences, and exhibited a severity in the surveillance of French officers of which the following order of General Vogel von Falkenstein is a specimen:—

"On each occasion that a French prisoner escapes, ten of his comrades with whom he was living will be chosen by lot and will be closely confined in a fortress and deprived of all the privileges granted to an officer prisoner of war." (*Kriegsbrauch*, p. 14.)

(i) Hague Rules, 8. Para. 75 indicates the character of a successful escape.

(j) If they are not shot down at once, they may subsequently be tried for the offence.

Ch. XIV. be executed by sentence of a proper court on conviction of an offence punishable by death under the civil or military law of the captor (a).

80. A commander may not put his prisoners to death because their presence retards his movements or diminishes his means of resistance by necessitating a large guard, or by reason of their consuming his supplies, or because it appears certain that they will regain their liberty through an impending success of their army. Whether nowadays such extreme necessity can ever arise as will compel a commander on grounds of self-preservation to kill his prisoners may well be doubted (b).

81. The execution of prisoners by way of reprisal is dealt with elsewhere (c).

Intern-
ment.

82. Prisoners of war are ordinarily interned (d), that is to say, they are compelled to reside in a certain town, fortress, camp, or other place. They may be bound not to go beyond certain fixed limits, obliged to respond to roll calls, and submitted to special surveillance so that any attempt at flight may be prevented.

83. They should, if possible, be removed from the frontier districts. Officers, with such servants as are considered necessary, should be detained in localities separate from the non-commissioned officers and men.

84. The relations of the various ranks to each other nominally cease during captivity (e). For the sake of convenience, however, non-commissioned officers may be placed in charge of squads of men (f). Officers of whatever rank become subordinate to the officers and soldiers who are entrusted with their security.

Legal
position.

85. Prisoners of war, whilst well behaved, cannot be placed in close confinement except as an indispensable measure of safety, and only whilst the circumstances which necessitate that measure continue to exist (g). They are, however, subject to the laws, regulations, and orders in force in the army of the State in whose power they are. In the case of crimes and misdemeanours they may be tried in the same way as a soldier of that army would be. Any act of insubordination justifies the adoption towards them of such measures of severity as may be considered necessary (h). Such an act may vary from simple absence at roll call to an attempt at escape. Collective punishment for the offences of individual prisoners is not forbidden (i).

86. Prisoners must not be regarded as criminals or convicts. They are guarded as a measure of security and not of punishment.

(a) Hague Conference, 1907, *Actes*, Vol. III, p. 29.

(b) The American Instructions, 1863, art. 60, read:—"In great straits when his own salvation makes it impossible to cumber himself with prisoners."

The German *Kriegsbrauch*, 1902, says:—"Prisoners can be killed . . . in case of extreme necessity when other means of security are not available and the presence of the prisoners is a danger to one's own existence . . . Exigencies of war and the safety of the State come first and not the consideration that prisoners of war must at any cost remain unmolested."

The last authenticated case of the killing of prisoners in cold blood occurred in 1799, at Jaffa, when 3,563 Arabs were shot down or bayoneted on the sea-shore by order of Napoleon.

(c) See para. 452 *et seq.*

(d) For the treatment of troops interned in a neutral country, see para. 485 *et seq.*

(e) By K.R. 222, the ordinary relations of superior and subordinate legally remain unaltered in the British Service, when officers, warrant officers, N.C.Os. or men become prisoners of war.

(f) It is undesirable to employ officers for this purpose, since if placed in charge of men they might feel bound to make at least an attempt to overpower the guard.

(g) Hague Rules, 5.

(h) *Ibid.*, 8.

(i) See note para. 77, above.

87. The object of the internment is solely to prevent prisoners participating further in the war. Anything, therefore, may be done that may seem necessary to secure this end, but nothing more. Restrictions and inconveniences are unavoidable, but unnecessary limitation of liberty, unjustifiable severity, ill-treatment and indignities are forbidden. The searching of prisoners is a necessary measure of precaution. Ch. XIV.

88. The Government into whose hands prisoners of war have fallen is charged with their maintenance. In default of special agreement between the belligerents, prisoners of war must be given the same scale and quality of rations, quarters, and clothing as the troops of the Government which captured them (a). Maintenance.

89. The scale of ration need only be that authorized for peace, without extras reserved for soldiers in the field. Prisoners are only entitled to what is customarily used in the country, but due allowance should, if possible, be made for difference of habits, and captured supplies should be used if they are available (b).

90. The rooms in which prisoners of war are accommodated must be as healthy, clean, and decent as possible; they should not be in prisons or convict establishments.

91. Freedom of movement inside the internment area should be permitted, unless there are special reasons to the contrary.

92. The State may employ the labour of prisoners of war, other than officers, according to their rank and capacity. The work must not be excessive, and must have no connection with the operations of war (c). Such work should be paid for at the same rates as are authorized for similar work of soldiers of that State, or if no rates are laid down, then at reasonable prices (d). Employment.

93. Prisoners may be authorized to work for municipal or other administrations, for private persons, or on their own account. In these circumstances the conditions and rates of pay must be settled in agreement with the military authorities (e).

94. The money earned by prisoners must be used, if they desire it, to purchase comforts and small luxuries. The balance can be retained but must be paid to them on their release, unless their Government refuses to refund the cost of their maintenance (f).

95. Officers who are prisoners must be given the same rate of pay as officers of corresponding rank in the army of the country where they are detained. The amount must be refunded by their own Government (g). There is no obligation to pay the rank and file (h).

(a) Hague Rules, 7.

(b) The ration of the Japanese soldier was found insufficient and unsuitable for the Russian prisoners. They were allowed nearly double the regulation scale, and as soon as possible were fed after their own fashion. (Ariga, 113.)

(c) Hague Rules, 6.

(d) *Ibid.*, 8.

(e) *Ibid.*, 6. In Germany, in 1870-1, prisoners of war were permitted to work in factories and on the land. In most wars prisoners have been allowed to make models, souvenirs, and other articles, one or more prisoners being permitted to act as agents for their sale.

(f) Hague Rules, 6. At the close of the Russo-Japanese War it was agreed in the treaty of peace that each belligerent should pay the cost of maintenance of its soldiers whilst prisoners of war.

(g) Hague Rules, 17. It should be noted that the members of the medical personnel whilst in the hands of the enemy must receive "the same allowances" as well as the same pay as are granted to persons holding the same rank in the enemy's army. Geneva Convention, art. 13.

(h) In 1870-1, the German rank and file prisoners in France received food and 7 centimes a day, the French rank and file prisoners in Germany received no pay.

Ch. XIV. 96. Prisoners of war may be set at liberty on parole, if the laws of their country allow it (a). In such cases they are bound, on their personal honour, scrupulously to fulfil, both as regards their own Government and the enemy Government, the engagements they may have contracted, and their own Government is bound neither to require of nor to accept from them any service incompatible with the parole given.

Parole.

97. Some doubt exists whether the engagement of a prisoner of war simply released on parole extends to active service only, or whether even indirect services are forbidden.

98. It is therefore advisable that the form of parole should state definitely the conditions under which the prisoner is released. For instance, whether he is only bound not to take part directly with arms in the present war; or whether he is not permitted to accept any appointment in his own country or in the colonies, which may give direct or indirect assistance; or whether all and every performance of duty is forbidden. The indirect assistance which could be rendered, if not forbidden, might include office work, work upon fortifications of places not besieged, raising or instructing recruits, fighting enemies who are not allies of the belligerent to whom he has given parole, repressing civil insurrections, or carrying out civil or diplomatic functions.

99. The parole should be in writing, and be signed by the prisoner (b).

100. A prisoner of war cannot be compelled to accept his liberty on parole, nor is the hostile Government compelled to accede to the request of a prisoner to be set at liberty on parole (c).

Broken parole.

101. Prisoners of war liberated on parole and recaptured bearing arms against the Government to which they have pledged their honour or against allies of that Government, forfeit their right to be treated as prisoners of war, and may be tried for the offence (d).

Prisoners of war information bureau.

102. A bureau of information relative to prisoners of war must be formed at the commencement of hostilities in each of the belligerent States. The work of this bureau is to reply to all inquiries with regard to prisoners (e).

103. The departments concerned must therefore notify to the bureau all casualties amongst prisoners, and furnish it with such information as will enable it to make out and keep up to date a history sheet for each prisoner of war (e).

104. This history sheet must give the number, surname, and Christian name of the prisoner, his age, place of origin, rank, wounds, date and place of capture, internment, wounding and death, with such other remarks as may be necessary. The sheet must be sent to the Government of the other belligerent as soon as peace has been concluded (e).

(a) Hague Rules, 10. As regards the paroling of officers interned in a neutral country, see para. 488.

(b) The formula used by the Japanese at the surrender of Port Arthur was written at the commencement of a book which such prisoners as accepted parole signed. It ran: "The undersigned declares under oath that he will not take up arms again against Japan, and will not act in any matter inimical to the interests of that country until the end of the present war." (Ariga, p. 115.)

Generally a duplicate list of persons paroled is made out and a copy sent to the enemy army. According to British practice, a soldier cannot give his parole except through a commissioned officer.

(c) Hague Rules, 11.

(d) Hague Rules, 12. According to the French Code (*Justice Militaire*, art. 204) "*est puni de mort, tout prisonnier de guerre qui, ayant faussé sa parole, est repris les armes à la main.*"

(e) Hague Rules, 14. This bureau is known as the "Prisoners of War Information Bureau."

105. Belligerents must, although hostilities may still be going on, keep each other mutually informed with regard to the sick and wounded who have been taken prisoners. A nominal roll must be sent as early as possible and all casualties notified, including any fresh admissions to hospital which have taken place (a).

106. It is usual, but not obligatory, to furnish similar information with regard to all prisoners of war (b).

107. The prisoners of war information bureau is also charged with the duty of receiving and storing all personal effects, valuables, letters, etc., found on the field of battle, or left by prisoners who have been released on parole, or exchanged, or have died in hospitals or ambulances. It must forward these effects to the persons concerned through their Government (c).

108. The information bureaux must enjoy the privilege of free carriage. Letters, money orders, and valuables, as well as postal parcels, intended for prisoners of war, or despatched by them, must be exempt from all postal charges in the countries of origin and destination as well as in the countries through which they pass. Presents and relief in kind for prisoners of war must be admitted free of all import and other duties, and free of any payment for carriage by State railways (d).

Letters and presents for prisoners.

109. The receipt and despatch of letters and other articles referred to above are subject to censorship and any regulations which the belligerent holding the prisoners may choose to lay down.

110. The exchange of prisoners is unusual in modern warfare, although it is in no way illegal, and the practice might for certain reasons be revived. The rule generally observed in the past was to exchange man for man and rank for rank, with due allowance if denominations differed or there were no exact equivalent. A condition was often made that the men exchanged should not participate as soldiers in the present war—in fact, they were paroled (e).

Exchange.

111. The exchange of prisoners is carried out by means of so called "cartels (f)." There are no other requirements than a simple statement agreed on by the two commanders, such agreement being arrived at by parlementaires or the interchange of letters. But for exchanges on a large scale commissioners are usually appointed (g), and commanders ought not as a rule in such cases to act without having previously reported to their Government.

112. Legally constituted charitable societies, formed for the purpose of assisting prisoners of war, must be given facilities for carrying out their task, provided military exigencies and administrative regulations permit. The representatives of the societies

Charitable societies.

(a) Geneva Convention, art. 4.

(b) Thus in the Russo-Japanese War, from the 30th March, 1904, a nominal list of Russian prisoners was sent weekly to the French Consul at Tokio, who transmitted it to St. Petersburg. In August, 1904, direct communication between the Japanese and Russian bureaux was established; the Russian bureau sent nominal rolls to the Japanese Legation in Berlin, and the Japanese bureau to the Russian Legation in Peking, on the 5th, 15th, and 25th of each month. At the close of the war the Russian Government sent a special commissioner to Tokio to receive the prisoner of war history sheets. (Ariga, pp. 120-1.)

(c) Hague Rules, 14. Geneva Convention, art. 4.

(d) Hague Rules, 16. The provision in regard to Customs duties applies only to articles intended for the personal use of prisoners. (Hague Conference, 1899, p. 145.)

(e) In 1810, when the British held 50,000 French prisoners and France a far smaller number of British, but a larger number of Spanish and Portuguese, Napoleon offered to exchange 1,000 British with 2,000 Spanish and Portuguese for 3,000 French. The British Government desired to exchange all the British first, but to this Napoleon would not agree, and the proposal fell through.

(f) See para. 338 below.

(g) This was the practice usually followed in the Napoleonic wars and in the American civil war. In the Crimean war exchanges were discussed and arranged through the intermediary of a neutral State.

Ch. XIV. need not, however, be given access to the places of internment of prisoners, or the halting places of prisoners who are being repatriated, unless they are in possession of a personal permit furnished to them by the military authorities, and have given an undertaking in writing to comply with all regulations of order and police which may be issued (a).

Religious observances. 113. Prisoners of war must be given complete liberty in the exercise of their religion, including attendance at the services of their own Church, on the sole condition that they comply with the regulations of order and police prescribed by the military authorities (b). The simplest method of carrying out this obligation is to allow ministers of their religion to have access to the prisoners at the usual times of service. It has already been stated that military chaplains cannot be made prisoners of war (c), but they should be permitted to accompany prisoners of war into captivity if they desire to do so.

Wills and burials. 114. The wills of prisoners of war must be received or drawn up, their certificates of death prepared, and their burials carried out, due regard being paid to their rank, in the same way as for soldiers of the army which captured them (d).

Repatriation. 115. Through the conclusion of peace captivity comes *ipso facto* to an end, but the prisoners of war remain nevertheless as a body under the military discipline of the Government that holds them, until their repatriation. The repatriation must be carried out as quickly as possible (e); but absolute immediate repatriation is not always feasible, owing to the risk of creating disorder (f) and to insufficiency of transport.

116. It is a matter of controversy whether prisoners of war may be detained who are awaiting trial or are undergoing a term of imprisonment imposed on them for disciplinary offences (g). It is advisable, therefore, to come to some arrangement with regard to all such prisoners in the terms of peace. That prisoners of war may be retained after the conclusion of peace until they have paid debts incurred during captivity seems to be an almost generally recognized rule.

(i.) c.—*Bombardments, Assaults, and Sieges (h).*

Undefended localities. 117. Investment, bombardment, assault, and regular siege are severally and jointly legitimate means of warfare. Their application, however, is strictly limited to defended localities; the bombardment or attack, by any means whatever, of undefended towns, villages, and buildings, whether fortified or not, is forbidden (i).

(a) Hague Rules, 15.

(b) *Ibid.*, 18.

(c) See para. 63 above.

(d) Hague Rules, 19.

(e) *Ibid.*, 20.

(f) Hague Conference, 1899, p. 144.

(g) After the Franco-German War in 1871 Germany retained such prisoners, whereas Japan, after the Russo-Japanese War in 1905, released them.

(h) It must be particularly noted that bombardment and assault on the battlefield are not dealt with here, as they are allowed in the same circumstances and under the same conditions as force in general.

A place is said to be blockaded when communication by water is entirely cut off, and ingress and egress rendered dangerous by the presence of a blockading squadron. An account of blockade will be found in Oppenheim II, p. 398. Being a naval operation, it is not necessary to allude to it in this work.

(i) Hague Rules, 25. The words "by any means whatever" were introduced to make it clear that the bombardment of undefended localities by means of balloons or other similar contrivances is prohibited.

Bombardment by naval forces in time of war is legislated for in a special Convention, which is referred to in footnotes where the provisions contained in it vary from the laws of war on land. A naval force may bombard an undefended place if the local authorities refuse, after summons, to comply with requisitions for supplies and provisions necessary for immediate use. (Convention respecting Bombardments by Naval Forces in time of War, art. 3.)

118. It is not sufficient reason for bombardment that a town contains supplies of value to the enemy, or railway establishments, telegraphs, or bridges. These must, if it is necessary to do so, be destroyed by other means (a). Ch. XIV.

119. The defended locality need not be fortified, and it may be deemed defended if a military force is in occupation of or marching through it. Defended localities.

120. A fortress or other fortified place is *prima facie* considered to be defended, and may be bombarded unless there are visible signs of surrender (b).

121. Once a fortress or defended locality has surrendered, only such further damage is permitted as is demanded by the exigencies of war: such as the removal of the fortifications, the demolition of military buildings, destruction of stores, and measures for clearing the foreground. It is not permissible to burn public buildings or private houses in such a place simply because it has been defended.

122. No legal duty exists for the attacking force to limit bombardment to the fortifications or defended border only. On the contrary, destruction of private and public buildings by bombardment has always been, and still is, considered lawful, as it is one of the means to impress upon the local authorities the advisability of surrender.

123. A town which is defended by detached forts, though they are at a distance from it, is liable to bombardment, for the town and forts form an indivisible whole (c). The town may, perhaps, contain workshops and provide supplies which are invaluable to the defence, and may serve to shelter a portion of its garrison when not on duty.

124. If military exigencies permit, the commander of an attacking force must do all in his power to warn the authorities before commencing a bombardment, unless surprise is considered to be an essential element of success. There is, however, no obligation to give notice of an intended assault (d). Notice of bombardment.

125. There is no rule which compels the commander of an investing force to allow all non-combatants, or even women, children, aged, sick, and wounded, or subjects of neutral Powers, to leave the besieged locality. The fact that non-combatants are besieged together with combatants, and that they have to endure the same hardships, may and often does, exercise pressure on the authorities to surrender. It is therefore left to the consideration of the besieging commander whether or not he will Exodus of non-combatants.

(a) The Convention respecting Bombardments by Naval Forces in time of War, art. 2, permits the bombardment of "military works, military and naval establishments, depôts of arms, and war material, workshops, or plant which could be utilized for the needs of the hostile fleet or army. . . . The commander of a naval force may destroy them with artillery, after a summons followed by a reasonable interval of time, if all other means are impossible, and when the local authorities have not themselves destroyed them within the time fixed." If for military reasons immediate action is necessary, the bombardment may be commenced without delay.

(b) Thus it would have been legal to have bombarded Pretoria, in June, 1900, as it was provided with forts which showed no signs of surrender.

(c) Some writers assert the contrary, though the general practice of belligerents is indicated in the text. There is, however, no doubt that a commander incurs no responsibility for any unavoidable damage caused by a bombardment.

(d) Hague Rules, 26. Notice of the intended bombardment of Paris and La Fère, in 1870, was not given, but as a rule the besieged is given notice with a view to sparing the civil population.

Ch. XIV. permit such individuals to leave (a). A temporary resident is not entitled to different treatment from a permanent resident.

126. A diplomatic envoy of a neutral Power, on account of his personal immunity, should not be prevented from leaving; and this applies perhaps to a consular officer of a neutral Power. If he voluntarily chooses to remain, he must suffer the same treatment as other inhabitants. He cannot claim permission to leave whilst hostilities are in progress, but the besieging commander should allow his withdrawal as soon as and whenever the circumstances and conditions of the particular case allow it (b).

127. All persons dwelling in the zone that will usually exist between the opposing forces in the first stages of a siege are treated as inhabitants of the invested locality. Humanity, however, makes it desirable that the commander of the besieging army should, if the circumstances and conditions of the case permit, allow them to withdraw into the fortress (c).

128. Private individuals who attempt to leave the fortress without obtaining the necessary permission are liable to be fired on, and may be sent back into the besieged place, or detained and put on their trial as suspected persons.

129. Should the commander of a besieged place expel the non-combatants or any portion of them in order to lessen the number of those who consume his stores of provisions, it is lawful, although an extreme measure, to drive them back, so as to hasten the surrender.

130. It is not necessary to cease or relax fire because the enemy sends women and children out of his lines in order to get them to a place of safety, or to implore compassion, but fire must not be intentionally opened in their direction.

Com-
munication
with
invested
locality.

131. No person has the right to demand permission to enter a besieged locality; and if a private individual attempts to enter he should be detained, and may be put on his trial as a suspected person.

132. The investing force has an absolute right to forbid all communication between a besieged locality and the outside. How far this rule applies to communications from diplomatic envoys to their home Governments is an open question. The commander concerned should report to, and ask instructions from, his Government (d).

(a) In recent years—for instance, at Port Arthur—the offer to permit women, children (boys under 16), the aged, and subjects of neutral Powers to leave has sometimes been made. At Port Arthur the conditions the Japanese laid down were that a statement of the approximate numbers of such persons classified by categories should be furnished, that the persons should be brought to a certain place at a certain time, that each person should only have the right to bring one package of ordinary size, which should be liable to examination if judged necessary, and that this piece of baggage should not contain letters or documents relating directly to the war under penalty of confiscation, and that the conditions must be accepted or refused *en bloc*. (Ariga, p. 277.)

(b) For further examination of the position of diplomatic agents and consuls, see paras. 132, 503 and 504 below.

(c) At the siege of Port Arthur the Japanese gave the inhabitants of this zone—neutral Chinese—three days' notice to leave or to remain. (Ariga, p. 273.)

(d) On the request of the diplomatic representatives of neutral States, who were shut up in Paris, that they might be permitted to send out a courier at least once a week, Count Bismarck replied in a despatch dated 27th September, 1870, as follows:—

“The authorization of exchange of correspondence with a besieged fortress is not, in general, in accordance with the customs of war; and although we willingly authorize the transmission of open letters of the diplomatic agents, provided their contents are unobjectionable (*sans inconvénient*) from a military point of view, I cannot admit that the opinion of those who consider the interior of the fortifications of Paris as a suitable centre for diplomatic relations has a good foundation. (*Kriegsbrauch*, p. 20.)

133. Although the bombardment of the private and public buildings of a defended town or fortress is lawful, all necessary steps must be taken to spare, as far as possible, buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected (*a*). Ch. XIV.
Public
buildings,
hospitals,
etc.

134. It is the duty of the besieged to indicate such buildings or places by distinctive and visible signs which must be notified to the enemy beforehand (*b*).

135. To indicate hospitals and other medical establishments the emblem of a red cross on a white ground is authorized. As this emblem must not be used for any other purpose (*c*) some other visible sign must be employed to indicate other privileged buildings (*d*).

136. Edifices for which inviolability is thus claimed must not be used at the same time for military purposes, as, for instance, for offices and quarters, or for signalling stations or observatories (*e*). If this condition is violated, the besieger is justified in disregarding the sign (*f*).

137. Accusations have frequently been made at sieges that the rule concerning the immunity of hospitals had been deliberately disregarded. The complaints were probably due to the fact that buildings used for medical purposes were scattered over a town, and that they were thus liable to be struck by chance or erratic shots. It is therefore desirable that the sick and wounded should, if possible, be concentrated in one and the same quarter, and in one remote from the defences and the defending troops, or, by arrangement with the besieger, in neutralized ground (*g*).

138. The giving over to pillage of a town or place, even when taken by assault, is forbidden (*h*). Pillage.

(ii.) *The Means of Carrying on War by Stratagem (Ruses).*

139. Ruses of war are the measures taken to obtain advantage of the enemy by mystifying or misleading him. They are permissible provided they are free from any suspicion of treachery or perfidy, and do not violate any expressed or understood agreement. Belligerent forces must constantly be on their guard against, and prepared for, legitimate ruses, but they should be able to rely on their adversary's good faith and his observance of the laws of war (*i*). Definition.

140. Good faith is essential in war, for without it hostilities could not be terminated with any degree of safety short of the total destruction of one of the contending parties. Good faith
and perfidy

(*a*) Hague Rules, 27.

(*b*) Hague Rules, 27.

(*c*) Geneva Convention, arts. 18-23. See para. 210 *et seq.*

(*d*) The Convention respecting Bombardment by Naval Forces in time of War provides (in art. 5) that the sign shall consist of "large stiff rectangular panels divided diagonally into two painted triangular portions, the upper portion black, the lower portion white."

(*e*) Hague Rules, 27.

(*f*) Thus the bombardment of Strasburg Cathedral in 1870 is held to have been justified, because an artillery observation station was established on its tower.

(*g*) As, for instance, at Intombi during the siege of Ladysmith.

(*h*) Hague Rules, 28.

(*i*) Hague Rules, 24. This reads: "Ruses of war . . . are considered permissible." According to the debate which took place at the Conference, however, this article is not to be taken to imply that every ruse is permissible. A ruse ceases to be permissible if it contravenes any generally accepted rule. (Hague Conference, 1899, p. 146.)

Ch. XIV. 141. Should it be found impossible to count on the loyalty of the adversary, there is grave danger of war degenerating into excesses and indiscriminate violence, to avoid which has been the aim of the modern laws of war.

142. The border line between legitimate ruses and forbidden treachery has varied in different ages, and military practice in the matter has frequently differed from the theories of writers. Many of the doubtful cases, however, which arose when troops, from the nature of their weapons, could only engage at close range, can now seldom or never occur.

Treachery. 143. It is expressly forbidden by The Hague Rules to kill or wound by treachery individuals belonging to the hostile nation or army (a).

Legitimate ruses. 144. Among legitimate ruses may be counted:—surprises; ambushes; feigning attacks, retreats or flights; simulating quiet and inactivity; giving large outposts or a strong advanced guard to a small force; constructing works, bridges, etc., which it is not intended to use; transmitting bogus signal and telegraph messages, and sending bogus despatches and newspapers with a view to their being intercepted by the enemy; lighting camp fires where there are no troops; making use of the enemy's signals, bugle and trumpet calls, watchwords and words of command; pretending to communicate with troops or reinforcements which have no existence; moving landmarks; putting up dummy guns or laying dummy mines; removing badges from uniforms; clothing the men of a single unit in the uniform of several different units, so that prisoners and dead may give the idea of a large force.

145. It is not illegitimate to employ spies (b), or even to corrupt enemy civilians or soldiers by bribes in order to induce them to give information, to desert, to surrender, to rebel, or to mutiny, or to give false information to the enemy; for a belligerent State can take measures to secure itself against such offences (c).

Improper ruses. 146. It would be contrary to modern practice to attempt to obtain advantage of the enemy by deliberate lying when there is a moral obligation to speak the truth; for instance, by declaring that an armistice had been agreed on when such was not the case. But, to give another instance, it would not be illegitimate for a few men to summon a force to surrender on the ground that it was surrounded, or to threaten bombardment although no guns have actually arrived.

147. Prisoners of war should not volunteer false statements. Should they, however, be plied with questions which, if answered correctly, might injure their army, they would be justified in deceiving the interrogator, and could not be punished for so doing (d).

148. To demand a suspension of arms and break it by surprise, or to violate a safe conduct (e), or any other agreement in order to obtain advantage is an act of perfidy and as such forbidden.

Improper use of Geneva Cross. 149. The improper use of the distinctive signs of the Geneva Convention is forbidden (f). The Red Cross flag must not be

(a) Hague Rules, 23 (b). As, for example, by calling out, "Do not fire, we are friends," and then firing a volley, or shamming disablement or death and then using arms.

(b) Espionage is dealt with in para. 155 *et seq.*

(c) Although many writers dissent, military practice has always sanctioned such acts.

(d) *Kriegsbrauch* 16, footnote. See also paras. 66-8

(e) See para. 328.

(f) Hague Rules 28 (f). See para. 210 *et seq.*

used to cover wagons employed for the transport of ammunition and non-medical stores. A hospital train must not be used to facilitate the escape of combatants. A gun or rifle must not be used from a tent flying a Red Cross flag, nor must a hospital or any other building, for which protection is demanded by flying the Red Cross flag or other symbol, be used as an observatory or military office or store. It would not be legitimate to take advantage of the respect due to the wounded and dead to feign disablement or death in order to await a convenient opportunity for destroying an obstacle or screen. Ch. XIV.

150. The improper use of a flag of truce (a) and of signals of surrender is forbidden. The flag must not be used merely to obtain time to effect retreat or obtain reinforcements. A surrender must not be feigned in order to take the enemy at a disadvantage when he advances to secure his prisoners. The fact that such acts are forbidden does not, however, absolve an officer from the necessity of taking proper precautions against them (b). Improper use of flag of truce.

151. In practice it has been considered a legitimate ruse to utilize the informal suspensions of arms for the collection of wounded and dead, which sometimes take place during a battle, to execute movements unseen by the enemy (c).

152. The employment of a national flag, military insignia, and uniform of the enemy for the purpose of ruse is not forbidden (d), but the Hague Rules prohibit their *improper* use, leaving unsettled what use is a proper one and what is not. Theory and practice are unanimous in forbidding their employment during a combat, that is, the opening of fire whilst in the guise of the enemy. There is, however, no unanimity with regard to the question whether the uniform of the enemy may be worn and his flag displayed for the purpose of effecting approach or retirement (e). Use of flags, uniform, etc.

153. Although no such opportunities of closing with an enemy by exhibiting his flag are possible in land warfare as in naval warfare, the small national flags which in some armies are carried to mark the infantry firing line, might be used to mislead an enemy. Owing to the long ranges at which fire is now opened, it would as a rule be of very little service to a large force to adopt the enemy's uniform, yet the use of it might be made at night and by small bodies and individual scouts (f).

(a) Hague Rules, 23 (f). See para. 229 *et seq.*

(b) During the recent operations of the French troops in Morocco, when the French had by surprise turned the enemy's wing, a single Arab advanced with a white flag, and during the delay that ensued his party were enabled to reinforce the threatened point.

(c) Thus at 1 p.m. on the 7th March, 1905, during the battle of Mukden, a group of Russians bearing Red Cross and white flags advanced towards the 1st Japanese Army and asked for a suspension of arms for several hours to remove the wounded and dead. The Japanese agreed, as they had many wounded; but the suspension was made without any defined agreement (*Sans entente bien définie*). In the evening, when the Japanese reopened fire, there was no reply, and it was found that the Russians had retired during the suspension of arms. Professor Ariga considers this was a legitimate ruse, although he calls it "unprecedented." (Ariga, 255.)

(d) Hague Rules, 23 (f).

(e) *Kriegsbrauch* (p. 24) thinks that the use of the enemy's uniform and flag is entirely forbidden by the Hague Rules. The French Manual (p. 19) states that actual practice tolerates their use as described in the text.

(f) Such persons, if captured in their enemy's uniform, would, however, be liable to trial as spies. (See para. 181 *et seq.*) If they use their arms they may be tried as war criminals. (See para. 441 *et seq.*) Cases have occurred of the great coats and head-dresses only of the enemy being made use of; these constitute enemy uniform.

Ch. XIV. 154. If, owing to want of clothing, it becomes necessary to utilize apparel captured from the enemy, his badges should be removed before the articles are worn (a).

V.—ESPIONAGE AND TREASON (b).

Legal means of obtaining information 155. The employment of measures necessary for obtaining intelligence with regard to the enemy and the theatre of war is formally sanctioned by the Hague Rules (c).

156. The ordinary means of obtaining information are reconnaissances by individuals or bodies of troops, questioning inhabitants and prisoners, examination of captured documents and papers, and the employment of spies or secret agents.

157. The collection of information openly by combatants clad in a distinguishable uniform is a recognized branch of the art of war, and it can be provided against by firing on the persons engaged in it or taking them prisoners. The acquirement of information by secret methods is controlled by laws of war which require some consideration.

Punishment for obtaining information by stealth. 158. It is lawful to employ spies and secret agents, and even to gain over by bribery or other means enemy soldiers or private enemy subjects (d). Yet the fact that these methods are lawful does not prevent the punishment, under certain conditions, of the individuals who are engaged in procuring intelligence in other than an open manner as combatants. Custom admits their punishment by death, although a more lenient penalty may be inflicted (e).

159. The offence is punishable whether or not the individuals succeed in obtaining the information and conveying it to the enemy.

Definition of spy. 160. Although any person who makes or endeavours to make unauthorized or secret communications to the enemy, or to collect information secretly for him, is ordinarily spoken of as a spy, the Hague Rules provide a definition of spy as regards land warfare which does not cover all such cases. For this reason the subject must be dealt with under the two headings of espionage and treason.

161. According to the Hague Rules (f) a person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavours to obtain information in the zone of operations of a belligerent with the intention of communicating it to the hostile party.

162. The Hague Rules (g) give several examples of persons who cannot be accounted spies, for instance: soldiers not wearing disguise who have penetrated into the zone of operations of the hostile army, and despatch bearers, whether soldiers or civilians who carry out their mission openly. It is also expressly mentioned

(a) Articles of uniform which are distinctive of a particular army, such as the *biret* of the French *Chasseurs des Alpes* or the Turkish *fez*, should not be made use of unless in case of absolute necessity.

(b) In this section only such cases of treason are dealt with as are closely allied with espionage; other forms of treason are considered in para. 445 *et seq.*

(c) Hague Rules, 24. This article is not, however, to be taken to imply that every means of obtaining information is allowable; measures cease to be permissible if they contravene any other article of the Rules. (Hague Conference, 1899, p. 146.) It would not, for instance, be lawful to compel inhabitants of occupied territory to furnish information about the enemy's army, as this is forbidden by Rule 44.

(d) Many writers dissent from this, but military custom has always sanctioned it.

(e) The French Code, for instance, states that in the case of individuals not soldiers the court may, if there are extenuating circumstances, reduce the punishment.

(f) Hague Rules, 29.

(g) Hague Rules, 30. These examples are not intended to be exhaustive.—(Hague Conference, 1899, p. 146.)

that persons sent in balloons either for the purpose of carrying despatches or maintaining communication are not as such liable to be treated as spies. Ch. XIV.

163. The principal characteristic of the offence is dissimulation of the object pursued.

164. It follows from the definition of spy that an officer or soldier who is discovered in the enemy's line dressed as a civilian, or wearing the enemy's uniform, may be presumed from the circumstances to be a spy, unless he is able to show that he had no intention of obtaining military information (a).

165. The fact that a person acting as a spy is in the naval or military service of his State, does not screen him from punishment should he be apprehended by the enemy. Nor does the fact that he is in uniform make it impossible for him to be a spy (b).

166. The Hague Rules do not refer to cases in which inhabitants of invaded or occupied territory, or enemy subjects residing in or visiting the territory of a belligerent, furnish, or attempt to furnish, information to the enemy. Such persons may be technically outside the zone of operations. They may without using any disguise merely report what they see, or what they obtain by the use of paid agents, and they may forward information by post or special messenger. Thus they might not in any way come under the definition of a spy as laid down in the Hague Rules. War treason

167. Such persons should be charged with war treason (c), for although treason as such is not mentioned in the Hague Rules, belligerents are by customary international law empowered to punish treason by death. Indeed in every case where it is doubtful whether the act consists of espionage, once the fact is established that an individual has furnished or attempted to furnish information to the enemy, no time need be wasted in examining whether the case corresponds exactly to the definition of espionage (d).

168. Subjects of neutral Powers resident in or visiting an invaded or occupied territory, can claim no immunity from the customary laws of war which threaten punishment for communication with the enemy.

(a) A civilian who came from the enemy's lines and attempted to return there, evading the outposts, might equally be presumed to be a spy, unless he can show that he has no intention of obtaining military information.

(b) A soldier admitted to the enemy's lines under the privileges of the Red Cross, of a flag of truce, or of a safe conduct might take advantage of opportunity afforded him of obtaining information.

(c) See para. 441 *et seq.*

(d) Usually when in the course of hostilities one of the belligerents takes possession of territory abandoned by his adversary, his first care will be to prevent inhabitants giving information with regard to his forces and movements. With this object in view he will notify the inhabitants by proclamation or other means that any individual who sends information to the army or government of his country with a view to injure the occupying army will be guilty of treason and will be punished with death. But even in the absence of such a proclamation an individual may be punished as a war traitor for all unauthorized or secret communication with the enemy.

If the act is committed by anyone in the home territory the laws of the land usually provide for its punishment. Thus in England a person can be tried for high treason on the counts of traitorously compassing, imagining and intending the deposition and death of the Sovereign and of traitorously adhering to, aiding and comforting the Sovereign's enemies. The leading case is that of the French Colonel, De la Motte (State Trials, Vol. XXI) who was resident in London, and was, in 1781, tried for collecting and forwarding to his Government reports with regard to the number of British ships and forces. It was then laid down that whilst a foreigner is under the protection of the laws of this kingdom, he owes allegiance to it equal to that of any natural-born subject, and that the fact that this allegiance is local and temporary is of no consequence in law.

Ch. XIV.

Trial of
spies.

Immunity
for com-
pleted
acts of
espionage.

Assistance
to spies.

169. A spy, even when taken in the act, must not be punished without previous trial (a).

170. A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, that is, after he has completed an act or attempted act of espionage, incurs no responsibility for his previous acts of espionage, and must be granted the privileges of a prisoner of war (b).

171. This immunity for previous acts does not apply to persons guilty of treason, for they may be arrested at any place or any time (c). And it is not necessary for traitors to be caught in the act in order that they may be punished.

172. Assisting or favouring espionage or treason and knowingly concealing a spy may be made the subject of charges; such acts are by the customary laws of war equally punishable.

173. Neither sex nor age afford any immunity from the operation of the laws with regard to espionage and treason.

VI.—THE SICK, WOUNDED AND DEAD.

Inter-
national
agree-
ments.

174. The treatment of the sick and wounded of armies, the privileges of the personnel charged with their care, the special immunities of the establishments and buildings in which they are attended, and the obligations with regard to the dead are dealt with in the "Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field" of the 6th July, 1906, generally called the "Geneva Convention" (d). The duties of neutral Powers as regards sick and wounded who are permitted to enter their territories are dealt with in the "Convention concerning the Rights and Duties of Neutral Powers and Persons" (e).

(i.) *The Sick and Wounded.*

Care of
sick and
wounded
obligatory.

175. The first and most important obligation is that sick and wounded persons belonging or officially attached to armies must be respected and taken care of, without distinction of nationality, by the belligerent in whose power they may be (f).

176. As this obligation might prove too onerous for a victor left in possession of a battlefield covered with the wounded not only of his own but also of the enemy's army, it has been agreed that a belligerent who is compelled to abandon sick or wounded to his foe must, so far as military exigencies permit, leave behind with them a portion of his medical personnel to take care of them, and the necessary material (g).

(a) Hague Rules, 30. Still less can anyone else be punished without previous trial, which in every case is indispensable.—(Hague Conference, 1899, p. 146.)

(b) Hague Rules, 31. Though he incurs no responsibilities for previous acts of espionage, this immunity applies only to such acts and does not extend to other infractions of the law of war.—(Hague Conference, 1899, p. 146.) Thus if he had killed anyone whilst effecting his return, he might be tried for murder.

(c) This was the Japanese practice in Manchuria. (Ariga, pp. 396-7.) But a civilian who had regained part of the country not occupied by the enemy, after spying in invaded or occupied territory, must be given the benefit of the immunity; for Rule 31 does not confine it to spies who are soldiers.

(d) Printed as Appendix 4. The original Convention of 22nd August, 1864, still holds good between Powers which were signatories of it and have not ratified or adhered to the late Convention. (See art. 31 of the 1906 Convention.)

(e) See para. 483 *et seq.*

(f) Geneva Convention, art. 1 (para. 1). A wounded man who continues to act in an actively hostile manner is not entitled to claim protection.

(g) Geneva Convention, art. 1 (para.

177. There is no obligation to tend inhabitants or other persons not officially attached to armies, who may have been wounded by chance, or accident, as a result of the hostilities in progress (a). Ch. XIV.

178. Sick and wounded who are captured are prisoners of war ; they have no privileges different from those of unwounded and healthy prisoners beyond that of proper medical attendance. In particular they have no right to claim exchange or release because they are unfit for active military service. Exchanges or releases, however, may be made, or sick and wounded may be handed over to a neutral State, by mutual agreement between commanders (b). Sick and wounded are liable to be made prisoners.

179. After an engagement the commander in possession of the field must take measures to have search made for the wounded and to protect them against acts of pillage and maltreatment (c). Search for and protection of wounded.

180. Measures must also be taken to punish very severely any such acts whether committed by persons subject to military law or by civilians (d).

181. A nominal roll of all wounded and sick who have been collected must be sent as early as possible to the authorities of the country or army to which they belong. The proper channel for sending this information to the enemy is the Prisoners of War Information Bureau (e). Nominal rolls to be sent to enemy.

182. Under Article 5 of the Geneva Convention of 1864 inhabitants who assisted the wounded could claim to be treated as neutrals, and those who took wounded into their houses were exempted from having troops quartered on them, as well as from part of the contributions of war. These privileges were not continued by the Convention of 1906. For it had been found that so far from ameliorating the condition of the wounded, they had had the effect of encouraging the inhabitants to withdraw wounded men from proper medical attendance and to move them when they had best been left undisturbed (f). Privileges of inhabitants who give assistance.

183. To soften the apparent harshness of this change, it has been agreed that if a competent military authority finds it necessary to appeal to the charitable zeal of the inhabitants, he shall grant to those who respond to his call special protection and such immunities as are possible. He must, however, secure that any assistance that is rendered is given under military supervision (g). As a rule the collection and removal of wounded are best performed by requisitioned rather than by voluntary labour, for it can be more easily regulated and controlled. Wherever there is plenty of

(a) The absence of any provision for the care of such persons has been regarded as a weak point in the Geneva Convention. During the Russo-Japanese War, both at Liao-yang and Mukden, the number of inhabitants—men, women and children—who were injured was very considerable. It is desirable that the principles of the Convention should be applied to such cases, although they are not specifically mentioned in it.

(b) Geneva Convention, art. 2. As regards the action of the neutral State in such a case, see para. 498 below.

(c) Geneva Convention, art. 3.

(d) Geneva Convention, arts. 3 and 28. Although Great Britain signed and ratified the Convention with reserve of art. 28 (which binds the signatory Governments to undertake the legislation necessary for the above purpose), as it was not possible to commit Parliament to any particular course for which legislation was not already available, there is no doubt that the required amendments of existing laws so as to include civilians, will in the course of time be approved. Commanding officers can meantime deal with offenders as marauders. (See para. 448.)

(e) Geneva Convention, art. 4 (para. 2).

For details of the Bureau, see paras. 102-12.

(f) The article in the old Convention had also led to more serious abuses: inhabitants took wounded under their charge not only in order to protect their homes but to save from capture members of their family and others who were hidden in the house; in some cases these persons feigned to be wounded soldiers.

(g) Geneva Convention, art. 5.

Ch. XIV. voluntary labour there must also be abundance of local resources available for requisition, so that no wrong is done to the wounded by restricting voluntary help on the part of the local inhabitants.

(ii.) *The Medical Personnel.*

Privileges
of the
medical
personnel.

184. In order that the sick and wounded may receive proper attention with as little disturbance as possible, all the units and establishments of the medical service, whether mobile or fixed, and their personnel and army chaplains, must be protected and respected in all circumstances by the belligerent forces. Further, the personnel, if it falls into the hands of the enemy, must not be held as prisoners of war (a). There is, however, no just clause for complaint of the violation of the Convention if in the execution of their duty members of the medical personnel and army chaplains are accidentally killed or wounded; they are only protected from deliberate attack (b).

185. To obtain the above privileges, the personnel must be exclusively engaged in the collection, transport, and treatment of the wounded and sick, or in the administration of the medical units and establishments (c).

Harmful
Acts.

186. The privileges accorded naturally cease if medical units and establishments are made use of to commit acts harmful to the enemy: for instance, to shelter combatants, to conceal guns, or to carry on espionage; or if the personnel take part in a combat (d). Certain acts, referred to in the following paragraphs, which in the past were considered to be of a harmful nature (e), do not now deprive a medical unit of the protection afforded by the Convention (f).

Arms.

187. It is expressly permitted that the medical personnel and medical orderlies may be armed and may use their arms for their own defence, or for that of the patients under their charge, against marauders and such like (g).

Armed
guards.

188. In some armies it is the practice to use trained soldiers as medical orderlies, while in others it is not; it is therefore expressly permitted that a piquet or sentinels taken from a combatant arm may be used as a guard to a medical unit. This guard, however, must be furnished with an authority in due form (h), so as to ensure that the privileges of the guard of a medical unit, which

(a) Geneva Convention, arts. 6 and 9.

(b) The words "neutral," "neutrality," and "neutralised," which were used in the 1864 Convention in connection with the medical personnel, are not employed in the 1906 Convention, by which the personnel is only entitled to be "respected and protected." It cannot, naturally, be made immune from the effects of shell and bullet fired at ranges at which badges and uniform are not distinguishable.

(c) Geneva Convention, art. 9. Drivers of the Army Service Corps who are on the establishment of field ambulances, and thus "exclusively engaged" on the transport of sick and wounded, are entitled to protection under this Article. The fact that they are "exclusively engaged" is indicated by the wearing of the Red Cross brassard referred to in para. 214.

(d) See para. 149. The offenders not only lose their privileges, but are liable to punishment as war criminals, see para. 441 *et seq.*

(e) *E.g.*, in the South African War, during which the Geneva Convention of 1864 was still in force.

(f) Geneva Convention, art. 7.

Members of the medical personnel who take part in a combat—and instances of their doing so have occurred, through excitement, or through a medical officer taking command in the absence, or on account of the disablement of other officers—should remove the Red Cross badge referred to in para. 214. Otherwise, if captured, their conduct may be made the subject of enquiry as an abuse of the Emblem under art. 23 of the Hague Rules. Permission to resume the badge should usually be accorded if it is asked for.

(g) Geneva Convention, art. 8 (1).

(h) *Mandat* in the original French, *i.e.*, a written statement signed by a responsible authority. The members of such a guard need not wear the badge referred to in para. 214.

are, whilst it is so employed, identically the same as those of the Ch. XIV. medical personnel, are not obtained improperly (a).

189. The fact that the arms and ammunition belonging to wounded men are found in a medical unit or hospital must not be construed to constitute an act harmful to the enemy. Every endeavour should, however, be made to hand over such articles to the proper department as early as possible (b).

Arms of wounded.

(iii.) *Voluntary Aid Societies.*

190. Under certain conditions, the personnel of Voluntary Aid Societies which may be employed in the units and establishments of armies, is assimilated to, and placed on the same footing as that of, the Army Medical Service (c).

Position of voluntary aid societies.

191. These conditions are: that the Societies must be duly recognized and authorized by their Governments, that the names of the Societies must be notified to the enemy before any of their personnel is employed, and that the personnel must be subject to military law (d).

Recognition and authorization.

192. So many irregularities, and even acts of hostility, have been committed in past wars by members of Voluntary Aid Societies that commanders should always take considerable care to ensure that the above conditions have been complied with before permitting such persons to assist the medical service.

193. The offers of assistance from the Voluntary Aid Societies of neutral States may be accepted, provided that the Societies obtain the consent of their own Government before offering their services, and the authorization of the belligerent Government which they wish to assist, and the latter Government notifies the fact of the authorization to its adversary before making any use of them. In these circumstances the personnel of the medical units of Voluntary Aid Societies of neutral States must be granted all the privileges accorded to the Voluntary Aid Societies of the belligerent concerned (e). It is not necessary to obtain the consent of the adversary to utilize their services (f).

Voluntary aid societies of neutral countries.

(iv.) *Captured Medical Personnel.*

194. Although the personnel of medical units and establishments may not be treated as prisoners of war, yet it is not free to act or move without let or hindrance should it fall into the hands of the enemy. If called upon it must continue to carry on its duties under his directions, attending to such sick and wounded as require its services. Only when its assistance is no longer indispensable must it be sent back to its own army or its own country (g).

Privileges and duties of captured personnel.

195. Thus, the medical personnel of a force which capitulates may be detained to attend to the sick and wounded included in the surrender, and may be sent back gradually.

(a) Geneva Convention, art. 8 (2) and art. 9 (para. 2).

(b) Geneva Convention, art. 8 (3).

(c) Voluntary Aid Societies are popularly called Red Cross Societies.

(d) Geneva Convention, art. 10.

(e) Geneva Convention, art. 11.

(f) Geneva Conference, *Actes*, p. 115.

(g) Geneva Convention, art. 12.

Ch. XIV. 196. Further, it is not left to the captured personnel to choose the time or route of its return, which is settled by the captor and is dependent on military exigencies (a).

197. The personnel on being returned is entitled to take with it such effects, instruments, arms, and horses as are the private property of its members (b).

198. In interpreting the above obligations it must be borne in mind that they are designed to secure that members of medical units shall not be in a position to take back useful information to their army. They are not meant to afford an excuse for depriving the enemy of the services of his medical personnel for an indefinite length of time.

Limitations on freedom of movement.

199. The fact that they may be detained and not permitted to return when and how they wish is sufficient penalty to prevent medical units and individual members of the medical personnel proceeding anywhere they please in a theatre of war for the purpose of collecting, succouring, or removing wounded and sick. If they persist in approaching when their presence is not desired, and refuse to halt when summoned to stop, it would be lawful, as an extreme measure, to fire upon them (c).

Pay and allowances.

200. Whilst members of the enemy's medical personnel are in his hands, a belligerent must grant them the same allowances and the same pay as are given to persons holding similar rank and status in his own army (d).

(v.) *Medical Material.*

Differentiation in treatment.

201. Although all the medical personnel must be released in case of capture, a distinction is drawn between the treatment of the material of mobile medical units (e), of fixed medical establishments and of convoys for the evacuation of sick and wounded.

Mobile medical units.

202. Mobile medical units must be released complete with their material, including their teams, whether their means of transport and their drivers belong to the army or are requisitioned. The conditions of release are the same as those laid down for the medical personnel. As far as possible the personnel and material should be restored at the same time (f). They should not indeed be separated unless the circumstances are such that the return of the personnel is immediately feasible, but delay must, on account of physical or other difficulties, occur before the material can be sent off.

203. A belligerent is, however, permitted to use the material in captured mobile medical units for the treatment of the sick

(a) Geneva Convention, art. 12. This clause was introduced into the Convention of 1906 to justify the usual practice in war. Under the Convention of 1864 captured personnel could, and did, demand to be sent back at once to the outposts of its own army. The inconvenience of this from a military point of view was so serious that the request was not always complied with. Thus, during the South African War members of the medical personnel captured by the forces of the Republics were returned via Delagoa Bay, and in the Russo-Japanese War some captured by the Japanese at Ta-shih-chiao and Mukden were sent back via Ying-kou. (Ariga, pp. 197, 206, 207.)

(b) Geneva Convention, art. 12 (para. 3).

(c) Nothing in the Geneva Convention gives medical units immunity from search. A Red Cross train or any other unit may, just like a ship, be summoned to halt by firing a shot across its course.

(d) Geneva Convention, art. 13.

(e) That is to say, those which are "intended to accompany armies into the field" (Geneva Convention, art. 6). Under this term are included,—besides the usual wheeled vehicles,—railway trains and boats used in internal navigation, which are specially fitted up for removing the sick and wounded, as well as any material belonging to the medical service for fitting up ordinary vehicles, trains, and boats. Geneva Convention, art. 17 (2), and Geneva Conference, *Actes*, pp. 138, 140.

(f) Geneva Convention, art. 14.

and wounded of his own army or those of the enemy's army who are in his power (a). Ch. XIV.

204. There is no obligation to provide teams to facilitate the return of the material should a captured unit have lost all or part of its own animals by casualties. If, however, military exigencies permit, every assistance should be rendered for the sake of the sick and wounded (b).

205. The buildings of fixed medical establishments, hospitals, and depôts remain in the power of the captor, for, from their nature, they cannot be sent back to the enemy. They may not, however, be used for other than medical purposes so long as they are necessary for the wounded and sick, unless in cases of urgent military necessity, and then only provided arrangements are previously made for the welfare of the wounded and sick found in them (c). Fixed medical establishments.

206. As a hospital or other fixed medical establishment would be useless without its material, this follows the fate of the buildings and becomes the property of the captor (d).

207. Convoys used for evacuating sick and wounded must be treated generally in the same way as mobile medical units—that is, their personnel and material must be restored. This rule is, however, subject to the following special provisions:— Convoys.

- (i) A commander who intercepts a convoy may, if military exigencies demand, break it up and take the military vehicles in it (other than those of the medical service, which must be restored) with their teams (e). He may also take and use, subject to the general laws of war, any requisitioned transport with it, including railway material and boats. He may also, as circumstances require, detain, requisition the labour of, or release any civilian personnel accompanying it.
- (ii) If he thus breaks up a convoy he must take charge of the sick and wounded in it. They are, as previously stated, liable to be retained as prisoners of war.
- (iii) He must treat as if it were medical personnel the whole of the military personnel detailed for the purpose of transport or guard of the convoy, provided it is furnished with an authority in due form (f).

208. Army medical material found elsewhere than in mobile medical units or convoys of evacuation is liable to capture. Depôts.

209. Material belonging to voluntary aid societies which are admitted to the privileges of the Geneva Convention is not completely assimilated as regards treatment to the material of the Army Medical Service. It must in all circumstances be regarded as private property. But whether it is found in a mobile medical unit, or in a Material of voluntary aid societies

(a) Geneva Convention, art. 14.

(b) Thus, after, the battle of Mukden, the Japanese provided sufficient transport for 60 members of the captured Russian medical personnel to enable them to return direct to their army. The remaining 710 persons, however, for whom no transport could be found, had to rejoin by making use of the railway into Chinese territory. (Ariga, pp. 205-7.)

(c) Geneva Convention, art. 15. Thus it would be permissible to fortify and garrison a hospital building, provided the sick and wounded were removed to another house.

(d) Geneva Convention, art. 15.

(e) See para. 202.

(f) Geneva Convention, art. 17. The personnel or guard referred to under (h) above need not wear the Red Cross Badge referred to in para. 214. As regards the "authority," see note to para. 188.

Ch. XIV. fixed medical establishment, or in a convoy of evacuation, or captured elsewhere in the theatre of war, it can always be requisitioned. In this case, unless it is paid for in cash, a receipt must be given for it (a).

(vi.) *The Medical Emblem.*

The Red Cross on a white ground.

210. The mark which has been adopted to indicate the medical service of armies is a Red Cross on a white ground (b). This sign, by the provisions of the Geneva Convention, must not be used except to protect and indicate the medical units and establishments and the personnel and material accorded privileges by the Geneva Convention (c).

Permission of military authority.

211. In no case can the sign be recognized unless it is used with the permission of competent military authority. The permission is signified either by a written authorization, or by an official stamp on the sign (d).

The flag.

212. Medical units and establishments must hoist the Red Cross flag. It must be accompanied by the national flag of the belligerent to whom the unit or establishment belongs, unless the unit falls into the hands of the enemy. In this situation the Red Cross flag alone will be flown (e).

213. The medical units belonging to neutral countries which have been authorized to afford their services under conditions already mentioned are not permitted to fly their own national

(a) Geneva Convention, art. 16. No exception is made as regards the material in mobile medical units, which, if it belongs to the Army Medical Service and not to a Voluntary Aid Society, must be returned (art. 14). See paras. 201 and 202. M. Renault in his *Rapporteur of the Comité de rédaction* of the text of the Convention, however, in his report holds the opposite view and considers that art. 16 does not override art. 14 (*Actes*, p. 257). No decision was, however, given on the matter by the Conference, at which M. Renault's report was neither read nor discussed.

The difficulties of applying this clause will be great, for in some armies, notably the Austro-Hungarian, the Red Cross Societies provide a considerable proportion of the transport and other material of the regular field medical units (see note to para. 216). Although not so stated in the Convention, the medical material of Voluntary Aid Societies should only be requisitioned for the needs of the army medical service and not for those of the fighting troops.

(b) Turkey, however, uses a Red Crescent, and Persia a Red Sun. In addition to flying the Red Cross flag, military hospital ships must be "painted white outside with a horizontal band of green about one metre and a half in breadth," and officially recognized hospital ships equipped by private individuals or societies, white with a similar horizontal band of red. (Hague Convention, 1864, for the Adaptation of the Principles of the Geneva Convention to Maritime War.)

(c) Geneva Convention, arts. 18, 23, and 27. Arts. 23 and 27, which forbid the use of the Red Cross emblem except to indicate the Army Medical Service, have not yet been signed and ratified by Great Britain, but the powers to accept these articles have been obtained by the enactment of the Geneva Convention Act, 1911 (1 and 2 Geo. V.), and the formalities involved in the notification of their acceptance at Berne will be carried out in due course. Until the passing of this Act, the full title of which is "An Act to make such amendments in the Law as are necessary to enable certain reserved provisions of the second Geneva Convention to be carried into effect," there was no municipal law in Great Britain to prevent the use of the Red Cross on white ground as a trade mark, a merchandise mark, or as a badge of a sisterhood or friendly society, or by any individual who chose to adopt it. The Act makes it unlawful "for any person to use for the purpose of his trade or business, or for any purpose whatsoever, without the authority of the Army Council, the heraldic emblem of the red cross on a white ground formed by reversing the Federal colours of Switzerland, or the words 'Red Cross' or 'Geneva Cross.'"

Existing rights in the emblem or words as a trade mark are permitted to continue for four years. It may be remarked that if within four years there should be war with a Power which has accepted these Articles and has completed the arrangements for forbidding the use of the emblem and words, it may become advisable to make provision under Martial Law to extinguish any existing rights to their use forthwith and to provide penalties.

(d) Geneva Convention, arts. 19, 20, and 21.

(e) Geneva Convention, art. 21. A rigid plaque may be used instead of a flag (Geneva Conference, *Actes*, p. 196). There is no indication how the two flags are to be associated. In most armies the two flags are flown on separate poles which are sometimes crossed. When both flags are hoisted on the same pole, the Red Cross should be uppermost (Field Service Regulations, part II, sect. 26, 2).

flag. They must fly the flag of the belligerent to whose armies they are attached; and they must in other respects conform to the instructions in the last paragraph (a). Ch. XIV

214. The persons protected by the Geneva Convention (b), in order to secure the privileges conferred by it, must wear fixed permanently to the left arm an armlet (brassard) with the Red Cross on a white ground, delivered and stamped by competent military authority (c). Such persons must, if they do not wear a military uniform, be in possession of a certificate of identity (d). The brassard.

215. The material of the medical service must, in order to obtain the benefits of the Convention, be marked with the Red Cross on a white ground (e). Marking of material.

216. Cases with regard to the treatment of sick and wounded which have not been specifically provided for or mentioned in this chapter must be dealt with conformably to the general principles enunciated in the Geneva Convention (f).

(vii.) *The Dead.*

217. The dead must be protected against pillage and maltreatment (g). Examination, protection, and burial of the dead.

218. The military identification marks or tokens found on the dead must be sent to the authorities of the army or country to which they belong as early as possible (h).

219. Before the dead are buried or cremated they must be carefully examined to see that life is extinct (i).

220. The articles of personal use, valuables, letters, &c., found on a field of battle or left by wounded or sick who die in medical establishments or units must be collected and transmitted to the persons interested, through the authorities of their own country (j).

(a) Geneva Convention, art. 22.

(b) That is to say, those engaged exclusively in the collection, transport, and treatment of the wounded and the sick, and in the administration of medical units and establishments and the personnel of Voluntary Aid Societies of the belligerents and neutrals who fulfil the conditions laid down in paras. 190-93.

(c) Geneva Convention, art. 23. Under the Geneva Convention of 1864 (art. 7) the brassard could be slipped on and off as it was merely "allowed" (*admis*) and no directions were given as to how it should be worn. It must now be "fixed" (*fixe*), because it would be gravely inconvenient if it could be put on and taken off too easily (Geneva Conference, 1906, *Actes*, pp. 194-261).

(d) There is no authorized form for certificates of identity. The use of certificates may lead to frauds unless there are marks on them by which the bearer can be recognized as the rightful owner. A certificate without such mark of recognition must be carefully scrutinized and steps taken to verify the rights of the bearer to be in possession of it. Finger-prints, photographs, and signatures are the most suitable recognition marks; but there may be difficulty as regards entering finger-print records or photographs; and in some countries signatures may not always be obtainable. There should, however, be no difficulty in noting distinguishable marks, such as scars on the face, loss of fingers or portions of fingers, etc., and the apparent age, height, colour of eyes and hair. Efforts are being made to obtain some definite international understanding with regard to the details which should be noted on a certificate of identity.

(e) If the material is marked with the Geneva Cross only, it cannot well be accepted as private property belonging to a Voluntary Aid Society, as the Cross is the distinctive mark of the medical service of armies (Geneva Convention, arts. 18 and 19). To obtain the extra privileges referred to in para. 209 the material of Voluntary Aid Societies should be marked, in addition to the Geneva Cross, with the name of the Society or some other means of identification.

The size of the Cross is not laid down. It was proposed at the Geneva Conference, 1906, that all the vehicles of the medical service should be painted white and should have on them as large a Red Cross as possible. Practical and economic objections led to the proposal being rejected (*Actes*, p. 194).

(f) Geneva Convention, art. 26.

(g) *ibid.*, art. 3.

(h) *ibid.*, art. 4. The Prisoners of War Information Bureau is the proper channel for the transmission. (See paras. 102-112.)

(i) Geneva Convention, art. 3. There is, however, no obligation to bury or cremate them, although the principle that even the enemy's dead should be given burial is generally admitted.

(j) Geneva Convention, art. 4. This would also appear to be the duty of the Prisoners of War Information Bureau.

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VII.—INTERCOURSE BETWEEN BELLIGERENTS.

(i.) *Non-hostile Relations in General.*

Necessity
and con-
venience of
intercourse.

221. Although the outbreak of war between States brings all the usual non-hostile intercourse to an end and closes the official means of intercommunication by diplomatic channels, it is sometimes unavoidable, and often convenient for commanders to open communication with the enemy for military purposes. Furthermore, humanity and convenience sometimes induce them for special reasons to grant certain relaxations in regard to the total cessation of the usual intercourse between the belligerent nations.

222. It is essential in all these non-hostile relations that the most scrupulous good faith should be observed by both parties (a), and that no such advantage should be taken as is not intended to be given by the adversary.

Summary
of means of
non-hostile
relations.

223. The ordinary kinds of non-hostile relations are comprised under the headings of parlementaires and flags of truce, armistices, capitulations, passports and safe-conducts, safeguards, and cartels (b).

(ii.) *Parlementaires and Flags of Truce.*

Parlement-
aires.

224. The usual agents in the non-hostile intercourse of belligerent armies are known as parlementaires (c).

225. Their duties include every form of communication with the enemy in the field. For example, the conveyance of a letter, or of a simple verbal message; a summons to surrender; negotiations for suspension of hostilities or for capitulation; settlement of the exchange of prisoners. Arrangements may be made through parlementaires for the appointment of plenipotentiaries or agents for any purposes of special importance (d).

Inviola-
bility.

226. Whilst in the performance of their duties, provided their conduct is correct (e), they are entitled to complete inviolability (f).

227. It is of the utmost importance that every soldier in an army, from the highest to the lowest, should be thoroughly acquainted with the privileges of parlementaires and with the proper mode of receiving them, so that no untoward incident can possibly arise.

Credentials
of parle-
mentaire.

228. According to the Hague Rules, a person to be regarded as a parlementaire must be authorized by one of the belligerents to enter into communication with the other and must present himself under cover of a white flag (g).

Significa-
tion of the
white flag.

229. Since time immemorial a white flag has been used as a signal by an armed force which wishes to open communication with the enemy. This is the only signification that the flag possesses in

(a) For good faith in other matters see para. 140 above.

(b) See paras. 105-106 as regards intercourse concerning wounded and prisoners.

(c) It has been thought desirable to adopt this word, for which the ancient verb "to parley" would seem good authority, from the Hague Rules; it is current in all other armies in addition to an expression for "flag of truce." The use of the latter term by British manuals in the past to mean indifferently both the envoy and the emblem, and sometimes to mean only the envoy, and at other times the envoy and his attendants, has given rise to some confusion. The use of the expression "bearer of a flag of truce" to signify the principal agent is also misleading, as he is seldom the actual bearer of the flag. See note to arts. 32, 33, 34 of the Hague Rules in Appendix 6 to this chapter.

(d) The punishment for sending a flag of truce to the enemy "treacherously or through cowardice" or "without due authority" is given in A.A. 4 (3) and 5 (4).

(e) See Hague Rules, 33 and 34, and para. 261 below.

(f) Hague Rules, 32.

(g) Hague Rules, 32.

International Law. The hoisting of a white flag, therefore, means **Ch. XIV.** in itself nothing else than that the one party is asked whether it will receive a communication from the other. It may, perhaps, only indicate that the party which hoists it wishes to make an arrangement for the suspension of arms for some purpose; but it may also mean that it wishes to negotiate for surrender. Everything depends on the circumstances and conditions of the particular case. For instance, in practice, the white flag has come to indicate surrender if hoisted in the course of an action by individual soldiers or a small party. Great vigilance is always necessary, for the question in every case is whether the hoisting of the white flag was authorized by the commander.

230. In consequence, when a white flag is hoisted the adversary need not necessarily cease fire (a). It is only by sending a parlementaire that an arrangement can be come to. It is absolutely necessary that the belligerent who hoists the white flag, because he wishes to communicate, should halt and cease firing; for otherwise the enemy is not certain that the hoisting of the white flag is authorized.

231. Fire must not intentionally be directed on the person carrying the white flag or persons near him (b). If, however, the persons near a flag of truce which is exhibited during an engagement are incidentally killed or wounded, it furnishes no ground for complaint. It is for the parlementaire to wait until there is a propitious moment, or to make a detour to avoid the dangerous zone. The proper time to send a parlementaire is during the intervals of active operations, only in cases of extreme urgency should one be sent during an engagement.

232. No provision is made for opening communication with an enemy during the hours of darkness, when a white flag cannot be seen (c).

233. The authorization given to the parlementaire should be in writing and signed by the commander of the force (d).

234. The commander to whom a parlementaire is sent is not obliged in every case to receive him (e). There may be a movement

The authorization.

No obligation to receive parlementaires.

(a) This is the view taken by all the authorities, e.g., Ariga, p. 274, Longuet, p. 233, Holtzendorff, IV, p. 423, *Kriegsbrauch*, p. 29, American Instructions, art. 112. The following instructions were issued by General Baron Nogi at the siege of Port Arthur, 1904:—

- a. During the bombardment of a fortress, although a particular fort hoists a white flag, there is no necessity to cease firing on that fort. Bombardment must be continued until an agreement is come to by the arrival of a parlementaire. A special order to cease fire will then be given by the commander of the army.
- b. The same course will be pursued if all the forts hoist a white flag; but in this case a report will be made as soon as possible to headquarters. Whilst waiting orders fire will be continued.
- c. If during a bombardment a parlementaire is seen leaving the enemy's lines, fire must not on any account be stopped or relaxed in the direction from which he comes, but he must not be fired on intentionally. (Ariga, p. 274.)

(b) See sub-para. c of the last footnote.

(c) During the pursuit after the battle of Mukden a body of Russian troops came up in the night behind a Japanese force and was heavily fired on. To indicate his desire to surrender the Russian commander had the Japanese national anthem played. This was, however, misinterpreted by the Japanese, who thought it was a ruse to deceive them, and they redoubled their fire. Their mistake was not rectified until daylight. (Communicated by a Japanese officer who was present.)

(d) The authorizations used in the Russo-Japanese war were usually in the following form:—"I authorize by these presents Major-General

Signed

Commander-in-Chief

of the Japanese Army besieging Port Arthur." (Ariga, p. 304.)

(e) Hague Rules, 33.

Ch. XIV. in progress the success of which depends on secrecy (a), or it may, owing to the state of the defences, be undesirable to allow an envoy to approach a besieged locality. In direct contrast, however, to a former rule it is now no longer permissible—except in case of reprisals for abuses of the flag of truce—for a belligerent to declare beforehand, even for a specified period, that he will not receive parlementaires (b).

235. It is permissible for a commander to declare subject to what formalities and conditions he will receive a parlementaire and to fix the hour and place at which he should appear (c).

236. An unnecessary repetition of visits need not be allowed.

Party
accompanying
the parlementaire.

237. The number of persons who may accompany the parlementaire to the enemy's lines, unless special authorization for additional ones is given (d), is limited to three: a trumpeter, bugler, or drummer, a flagbearer, and an interpreter. These are entitled to the same inviolability as the envoy himself (e).

238. The parlementaire may, however, come alone, carrying the white flag himself. It is, however, advisable that he should at least have a trumpeter or bugler with him, for otherwise his character might not be understood quickly enough to prevent danger to himself (f).

Conduct of
the parlementaire.

239. The parlementaire, mounted or on foot, as may be convenient, provided with the necessary authorization, and accompanied by the attendants permitted to him, should approach the enemy's outposts or lines at a slow pace (g). As soon as he reaches a position where he can be seen and heard, the trumpeter, bugler, or drummer should sound, and the flag should be waved.

240. He should then advance at a walk towards the line, obeying any directions that may be signalled or given to him by the party sent out to meet and conduct him (h).

241. He has no right to enter the line at any point that he may wish, but may be directed to a piquet or detached post detailed to deal with traffic through the outposts. If the distance to be traversed is considerable, he may be given an escort to it, or instructed to reach it by retiring and approaching by another route.

(a) Thus, after the battle of Montebello, in 1859, the French refused to receive parlementaires from the Austrian lines, as it was essential to conceal certain movements.

(b) *Kriegsbrauch* (p. 27) and many text books published after the first Hague Conference of 1899 still teach the former rule as valid. However, the contrary is clearly apparent from the report of the Hague Conference of 1899 (p. 147). On the other hand, it would seem permissible for a belligerent to resort, to reprisals, and to declare that he will not receive parlementaires in case the enemy is guilty of a gross abuse of the flag of truce. See para. 452 *et seq.*

(c) Thus at the siege of Port Arthur, General Baron Nogi stipulated that the Russian parlementaire "should arrive at the first line of the Japanese army, at the entrance of Shui-shih-ying, on the main road from Port Arthur to Chin-Chou, on 17th April, 1904, before the first minute of 10 a.m." (Ariga, p. 27).

(d) This should be obtained in writing.

(e) Hague Rules, 32.

(f) It is quite clear from the report of the Hague Conference, 1899 (p. 147), that the parlementaire may come quite alone, carrying the flag of truce himself. *Kriegsbrauch* (p. 26), issued in 1902, lays down that the parlementaire must be "clearly recognizable by usual known signs (white flag or in emergency a white handkerchief, etc.) and calls (bugle and trumpet calls, roll of the drum) visible and audible from afar."

Kriegsbrauch (p. 26) adds "horse-holders" to the persons already named who may accompany the parlementaire, but there is no authority for this, nor for granting them inviolability. The party should be strictly limited to the numbers allowed by the Hague Rules, unless special authorization is given.

(g) Several unfortunate incidents have occurred owing to the parlementaire arriving at or leaving the enemy's lines at a gallop and being fired on in error.

(h) For the detailed instructions as regards the conduct, of the outposts, see Field Service Regulations, 1909, Part 1, s. 86.

242. If signalled or ordered to retire, he must do so at once. If he does not do so within reasonable time he loses his inviolability, and is liable to be fired on or to be made prisoner. If he does retire, he may not be intentionally fired on or interfered with in any other way. A battle need not, however, be brought to a standstill on his account, and if he is incidentally killed or wounded no blame can be attached to the belligerent concerned.

243. On arriving in the vicinity of the piquet or detached post, the parlementaire should dismount with his party, leave it to wait for him, and proceed alone on foot to the officer on duty and state his wishes. His attendants should not attempt to enter the lines with him, and they must obey any directions given to them by the enemy.

Arrival in enemy's lines.

244. A parlementaire cannot, as a matter of strict right, claim to pass the outposts, nor can he demand to be conducted into the presence of the commanding officer. His message, if written, may be transferred to the officer receiving him, who should give a receipt for it; if it is verbal, the officer may demand that it should be reduced to writing, or delivered orally to such person as may be designated to receive it.

245. The greatest courtesy should be observed on both sides. If there is any conversation, the subject of the military situation should not be touched on, and great care taken to avoid giving or asking for information. A parlementaire is not, however, forbidden to see and afterwards to report what his enemy does not hide.

Courtesies.

246. The parlementaire should be treated with all the honours due to his rank, and, if thought desirable for his protection, a guard or escort should be provided for him.

247. Unless other instructions have been received, or the parlementaire has only a letter to deliver, the commander-in-chief should be informed through the ordinary channels so that the necessary orders may be obtained. The parlementaire must wait until these arrive.

248. All measures necessary to prevent the parlementaire from taking advantage of his mission to obtain information are allowable (a). Care should be taken that he and his party are prevented from communicating with anyone except the persons nominated to receive them. If permission is given for the parlementaire to enter the lines for the purpose of negotiation, or if the officer of the piquet or post, or any superior officer, thinks it desirable for any special reason to send him to the rear, he may, and invariably should, be blindfolded, and be taken to the destination by a circuitous route.

Measures of precaution.

249. The parlementaire should be permitted to retire and return with the same formalities and precautions as on arrival.

250. A commander has by the Hague Rules the right of detaining a parlementaire temporarily if the latter abuses his position (b). In addition, a commander has, by a customary rule of International Law, the right to retain a parlementaire so long as circumstances require, if the latter has seen anything knowledge of which might have ill consequences to the other army, or if his departure would have coincided with movements of troops whose destination or employment he might guess.

Detention of parlementaires.

251. A parlementaire loses his right of inviolability if it is proved in a positive and incontestable manner that he has taken advantage

Misconduct of parlementaires.

(a) Hague Rules, 23. This applies equally to the members of the party who accompany him.

(b) Hague Rules, 22.

Ch. XIV. of his privileged position to provoke or commit an act of treason (a). He can then be put on his trial.

252. Any measures taken against a parlementaire or his party should at once be reported to the enemy.

Improper
use of the
white flag.

253. The improper use of the flag of truce is particularly forbidden (b). It constitutes an abuse of the flag of truce if the force which sends a parlementaire does not halt and cease fire whilst the parlementaire is approaching and is being received by the other party.

254. It further constitutes an abuse of the flag of truce if a white flag is made use of for the purpose of making the enemy believe that a parlementaire is about to be sent, when there is no such intention, and of carrying out operations under the protection granted by the enemy to the pretended flag of truce.

255. Every abuse of the flag of truce entitles the injured party to reprisals (c).

(iii.) *Armistices.*

Nature and
kinds of
armistices.

256. During the continuance of war belligerent forces have sometimes occasion to suspend active operations within the whole or part of the region and theatre of war. The mutual agreements made for such temporary cessations of hostilities are known, in the wider sense of the term, as armistices. Although all armistices are essentially alike, in so far as they consist in cessation of hostilities, three different kinds must be distinguished, namely, suspensions of arms, general armistices, and partial armistices (d).

257. The Hague Rules (e) distinguish only between general and local armistices, apparently comprising both suspensions of arms and partial armistices under the term "local armistices."

Suspensions
of arms.

258. A suspension of arms is essentially a military convention of very short duration, concluded between commanders of armies or detachments in order to arrange some pressing local interest: most frequently to bury the dead, or to collect and succour the wounded (f), or sometimes to exchange prisoners, or to permit conferences, or to enable a commander to communicate with his Government or a superior in order to request or obtain orders (g).

(a) Hague Rules, 34. Although a parlementaire cannot in strictness commit an act of treason as regards the enemy, the word treason has been maintained in the Hague Rules because in some penal codes the instigator of an act of treason is considered an accessory.—(Hague Conference, 1899, p. 147.) In the translation of art. 34 of the Hague Rules, *trahison* is, in error, rendered "treachery," not "treason." See Appendix 6 to this chapter.

(b) Hague Rules, 23 (f). See para. 150.

(c) See para. 234 above and para. 452 *et seq.*

(d) Five expressions have in the past been used in the British Army to signify a cessation of hostilities falling short of peace:—Truce (as in the "History of the War in South Africa," Vol. II, p. 501), local truce, armistice, cessation of hostilities (as in the convention made after Majuba in 1881), cessation of arms (as in the negotiations preceding the surrender at Saratoga), and suspension of arms. Yet they do not appear to have been employed with any exactitude, and even a further expression, a "cease fire for three hours" has not been unknown. Other languages have no exact terminology either: the Germans speak of *Waffenruhe* and *Waffenstillstand*, without exactly distinguishing between them, and *Kriegsbrauch* uses the term *Waffenstillstand* only. The French instructions distinguish between *armistices* and *suspensions d'armes*. It has been found advisable to follow the practice of the more authoritative publicists in distinguishing three different kinds of armistices as in the text.

(e) Art. 37.

(f) *E.g.*, at the siege of Port Arthur authority was given to the divisional generals of the Japanese army to arrange suspensions of arms for the removal of the dead, if they judged fit, without reference to the commander-in-chief. (Arita, p. 294.)

(g) Thus a suspension of arms was agreed upon at the siege of Belfort on 13th February, 1871, in order to allow the commandant to receive instructions from the French Government (see App. 16); and on 9th August, 1898, the Governor of Manila requested a suspension of arms from Admiral Dewey which would allow him to receive instructions from Madrid.

259. A suspension of arms applies only to the troops under the command of the officers who agree to it. Ch. XIV.

260. Suspensions of arms have nothing to do with the war generally, nor with political purposes, since they only serve a pressing military interest of local importance. For this reason every commander of a force is, so far as the enemy is concerned, supposed to be competent to agree upon a suspension of arms, and no ratification on the part of superior officers or other authorities is required. Such an agreement is therefore in all circumstances and under all conditions binding, although a subordinate commander who enters upon it without instructions may be held responsible by his superior.

261. A general armistice (*a*) suspends the entire military and naval operations of the belligerents. It is a formal interruption of the war throughout the whole region and theatre of war, although for special reasons small parts of the belligerent forces and small parts in the theatre of war may be excluded from a general armistice (*b*). General armistices are of a combined political and military character. They usually precede the negotiations for peace, but may be concluded for other purposes. General armistices.

262. Since a general armistice is of vital political importance, only the belligerent Governments themselves, or their commanders-in-chief, are competent to agree upon it, and ratification is always necessary. Should an armistice which has been agreed upon by a commander-in-chief not find ratification on the part of his Government, hostilities can, after due notice to the enemy, at once be resumed without breach of faith (*c*). General armistices are frequently arranged by diplomatic representatives (*d*).

263. A partial armistice suspends operations between certain considerable portions only of the belligerent forces, and within a fixed considerable zone only of the region and theatre of war. A partial armistice may be concluded for the military forces only; or for the naval forces only; for cessation of hostilities in the colonies only; for cessation of hostilities between two of the belligerents in case more than two are parties to the war (*e*). It is, however, always a condition that a considerable part of the forces and the region of Partial armistices.

(*a*) See Hague Rules, 37.

(*b*) Thus the armistice of Portsmouth (U.S.A.), of 5th September, 1905, was a general one. The armistice of Paris, of the 26th January, 1871, was likewise a general one, although military operations in the departments of the Doubs, the Jura, and the Côte d'Or were excluded. The assertion of *Kriegsbrauch* (p. 42), that this armistice was not a general one, cannot stand in face of the fact that the first words of art. 1 of the convention concerning it stipulate it to be "*un armistice général*" (see Official Account of Franco-German War (German original), 2 Theil, 2 Band Anlage, No. 156).

(*c*) The text is in distinct contrast to para. 52 of Ch. XIV of the fourth edition of this Manual. The section referred to ran as follows: "A power to conclude an armistice is essential to the fulfilment by a commanding officer of his official duties, and therefore he is presumed to have had such a power delegated to him by the sovereign without any special command. This presumption of authority is so strong that it cannot be rebutted by any act of the sovereign. If an officer makes an armistice in disobedience to orders received from his sovereign he is punishable by his sovereign; but the sovereign is bound by the armistice, inasmuch as the enemy cannot be supposed to have known of the limitation of authority imposed on the officer." In face of the fact that theory and practice are united upon the rule that a general armistice concluded by a commander-in-chief requires ratification on the part of the Government, it was found impossible to adhere to the opinion thus expressed.

(*d*) The armistice at the close of the Franco-German War was concluded by diplomatic representatives—Count von Bismarck and Jules Favre; the general armistice at the close of the Russo-Japanese War was concluded at Portsmouth (U.S.A.) by diplomatic representatives, but the detailed conditions for the armistice in Manchuria were settled by the military authorities.

(*e*) Thus the armistice concluded by the allies with Napoleon in Germany in 1813 was a partial armistice, as it did not extend to Spain or other parts of the theatre of war; the armistice of Steyer, 25th December, 1800, applied to the French and Austrian forces in Germany only, those in Italy continuing hostilities.

Ch. XIV. war must be included, and that the cause for which it has been concluded is not only some pressing local interest, as in the case of a suspension of arms, but one of a more general character, such as a general exhaustion of the opposing belligerent forces in one part of the theatre of war; the outbreak of a virulent infectious disease in the opposing camps; an earthquake; or any other cause, the requirements of which cannot be satisfied by a mere suspension of arms, but do not demand a general armistice.

264. Commanders-in-chief of the forces concerned are presumed to be competent to conclude partial armistices, and ratification on the part of their Governments is not required unless specially stipulated in the convention for the arrangement of a partial armistice. Commanders, however, are responsible to their own Governments in case they agree upon partial armistices without having special authorization for that purpose.

General
rules
regarding
armistices.

265. The rules which follow are common to suspensions of arms, general armistices, and partial armistices (a).

266. An armistice is not a partial or temporary peace, it merely suspends hostilities without putting an end to the war, and only suspends them to the extent agreed upon by the commanders concerned.

267. If an officer makes an armistice containing stipulations too favourable to the enemy, the engagement cannot be invalidated on that account.

268. On the other hand, an officer who concludes an armistice can enter upon engagements with regard to such points only as are within the range of the conduct of the war itself. A commander cannot agree to the transfer of sovereignty over a territory, or stipulate for permanent rights to be conferred on the inhabitants of a country. Such powers are neither within the range of the conduct of the war nor necessary for the success of the operations of war (b).

269. An officer has likewise no power to agree to such a clause in an armistice as concerns troops or a district not under his command (c).

Com-
mencement
of
armistices.

270. An armistice binds the contracting authorities from the date at which it is concluded. It must, however, be published in all the places to which it relates, for the purpose of controlling the acts of individuals. It is the duty of the contracting authorities, therefore, to notify an armistice officially and in good time to all commanders and to the troops. Hostilities are suspended immediately after the notification, or at a fixed time, as may be arranged (d).

271. Should an officer, ignorant of the fact that an armistice has been made, commit an act of hostility by capturing towns or taking prisoners, he is not punishable for the act, although the State to which he belongs is bound to restore them. Nor can individuals, nor the State, be held responsible for any deaths or damage arising

(a) For the sake of brevity, the word "armistice" alone will, therefore, be used in the remainder of this chapter to include all three.

(b) Thring, p. 298.

(c) General armistices being of vital political importance, belligerents may arrange any matters they think fit in them, as, for instance, evacuation of certain territory, surrender of a certain fortress, and the like. Thus the Paris armistice of 28th January, 1871, which was granted to the Government of National Defence in order to permit it to hold elections and ascertain whether the country desired that the war should continue, or if not, on what conditions peace should be made, contained the conditions of the surrender of Paris. The armistice proposed in Korea at the close of the Russo-Japanese War contained a clause fixing the evacuation of certain territory.

(d) Hague Rule, 38. The Paris armistice of 28th January, 1871, came in force for Paris on that day, but for the provinces, in order to allow time for its notification, not until the 31st January.

out of such an act, unless they have been guilty of negligence or **Ch. XIV.** breach of faith in making known the armistice.

272. No one is bound to believe a notification by the enemy that an armistice has been concluded. History furnishes many an example giving warning against too easy credulity in this respect (a).

273. A special form for the convention of an armistice is not prescribed (b). Wherever possible the agreement should be in writing, in order to avoid complications and to have a record should differences of opinion arise. Every endeavour should be made to give very great precision to the statement and to draft it with absolute clearness. As soon as it is signed, the stipulations of the convention for the armistice are absolutely binding upon the contracting parties, and must be observed with the utmost strictness. It is of the utmost importance that the meaning of the instrument should in no way be arbitrarily interpreted by either party (c).

Form of armistices.

274. It is advisable that the convention for an armistice should be drawn up in duplicate in the languages of both belligerents, each side retaining a copy in each language (d).

275. The duration of an armistice may be for a definite or indefinite time, and with or without a further period of notice of expiration.

Duration of armistices.

276. If its duration is indefinite the belligerent parties may resume operations at any time (e), provided always that the enemy

(a) Such an example is, for instance, the approach by the French to the bridge over the Danube at Florisdorf on 13th November, 1805, under pretence that there was a suspension of arms pending completion of the negotiations for peace (*Mémoires du Général Rapp*, p. 59). Another example is the following:—Blücher, with 5,000 men, escaped from General Lasalle, at Weissensee, the 16th October, 1806, by sending a parlementaire to assure him that a six weeks' armistice had been concluded, which was not the case. (Despatch No. 2587, with Lasalle's report, Murat to Napoleon, in *Lettres et documents pour servir à l'histoire de Joachim Murat*, Vol. IV.) Notifications have, however, erroneously been made in perfect good faith. Thus, during the operations between the troops commanded by General von Manteuffel and General Clinchant in the south-east of France on the 29th January, 1871, a French general staff officer handed to the commander of the 14th German Division a despatch from General Clinchant, to the effect that an armistice for twenty-one days had been concluded on the 27th January, and that this was to be notified to the enemy. No armistice was concluded until the 28th, and then the operations of these particular troops were excluded from its effects. (*Kriegsbrauch* p. 43.)

(b) The armistices agreed on by the Japanese and Russian plenipotentiaries at Portsmouth, U.S.A., on 5th September, 1905, the protocol of the conditions of the armistice concluded in Manchuria on 13th September, 1905, and the convention for the suspension of arms at the siege of Belfort, 13th February, 1871, as well as certain forms drawn up by Lord Thring, are given for reference in Appendices 10 to 16 at the end of this chapter.

(c) The dangers of indefiniteness in matters connected with an armistice may be illustrated by the incident at the attack on Rome in 1848. On 17th May, 1848, a verbal arrangement for an armistice without fixed details was made by M. de Lesseps, acting for the French, and the Roman authorities. On the 1st June, General Oudinot, the French commander, wrote to General Rosselli, commanding in Rome, that he had received instructions to recommence operations at once. But in consideration of the French residents in Rome, he continued, "je diffère l'attaque de la place jusqu'à lundi matin" (5th June). The Roman officers interpreted this to mean that the French commander would not commit any hostile act until the morning of the 5th June; but he took it to signify merely that he would not attack the permanent fortifications of Rome until that time, and was free to commence operations anywhere short of them. Consequently, in the early hours of the 3rd June, the French surprised and captured two villas in the outpost position covering the enceinte of Rome, and thereby determined almost without a shot the fall of the city. (*Garibaldi's Defence of the Roman Republic*, by G. M. Trevelyan, 1907, pp. 344, 345.)

(d) Cases have occurred in which belligerents have agreed to use the language of a particular nation instead of their own.

(e) Hague Rules, 36.

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Ch. XIV. be notified so that the recommencement of hostilities may not be a surprise (*a*).

277. If the duration of an armistice is definite and fixed, hostilities may be commenced without previous notice at the moment it expires.

278. An armistice commences, unless another time is expressly mentioned, at the moment it is signed; the date and hour of the completion of signing should therefore be recorded on it.

279. In the case of a short armistice the number of hours should be stated (*b*). If an armistice is agreed on for a number of days it terminates at midnight of the last day (*c*). It is always necessary, in order to prevent misunderstandings, to state that the armistice commences at a certain hour on one day and ends at a certain hour on another day, for otherwise the commencement and termination are uncertain (*d*).

280. It is advisable, especially in the case of a short armistice, for the belligerents to agree to indicate the commencement of the cessation of hostilities by some signal: for example, by each party hoisting a flag, and keeping the flags hoisted until the termination of the armistice, and lowering them simultaneously.

281. An armistice may be prolonged under the same conditions as it was concluded.

Actions
forbidden
and per-
mitted
during
armistices.

282. During an armistice the belligerent forces which it affects must of course cease fire; they must not attempt to gain ground; in a siege they must not push on with parallels and saps. In a word, all offensive measures of whatever nature, and any action or movements which the enemy might have been able to prevent, are forbidden. The belligerent forces are, however, permitted to do anything which will tend to the improvement of the situation after the expiration of the armistice and assist the continuation of the struggle, unless they are expressly prohibited by the text or sense of the agreement. For instance, troops may be trained, new forces recruited, arms and ammunition manufactured, reinforcements and supplies brought up (*e*), and troops shifted from one position to another inside the lines.

283. The question what defensive measures—for instance, what repairs of fortifications—may without perfidy be undertaken during an armistice has been much debated, and is one on which various opinions have been held. It is best settled by a definite arrange-

(*a*) Hague Rules, 36. This says, "provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice." It might possibly be interpreted to mean that if no time is mentioned hostilities may be resumed at any moment; but such an interpretation would not be admissible.

(*b*) An armistice made for 24 hours on the 1st January at 6 p.m. ends on 2nd January at 6 p.m.

(*c*) Thus an armistice concluded at any hour on 1st January for 21 days expires at midnight of the 21st/22nd January. An armistice concluded for 21 complete days would terminate at the same hour as the commencement after the number of complete days had elapsed.

(*d*) Supposing an armistice is made from the 1st May to the 1st August, without mentioning hours, questions have been raised whether the days named are both included or both excluded. The usual mode of reckoning time in England in legal documents is to include the first day and to exclude the last. Consequently in the above case, according to English law, the truce begins at the moment on which the 30th April ends and ceases at the moment at which the 1st August begins, that is, midnight 31st July/1st August. (Thring, p. 239.) Some publicists, however, exclude the first day and include the last.

(*e*) In the armistice concluded at Portsmouth (U.S.A.) between Japan and Russia, it was stated in art. 4 that "during the armistice no reinforcements may be sent to the theatre of war. Those who are on the way from Japan may not be sent north of Mukden, and those on the way from Russia may not be sent south of Harbin." (Arita, p. 548.)

ment (a). As it is impossible to check what goes on within the enemy's territory behind his lines, it is useless to impose elaborate conditions, the execution of which cannot be verified. Ch. XIV.

284. If an armistice is declared without conditions, nothing more than a total cessation of hostilities along the front of both positions is required.

285. The conclusion of an armistice gives a besieged fortress no right to introduce provisions either for the garrison or civil population. It may, however, be arranged to supply them so that at the end of the armistice the forces are in the same position as at the beginning (b).

286. The situation in occupied territory (c) remains the same during an armistice as during hostilities.

287. It is usual to return any prisoners or property that may be captured in any action that takes place by ignorance or accident after the conclusion of an armistice (d). There is no obligation to return deserters who come over during an armistice. Although to receive and harbour them has by some writers been declared to be an implied act of hostility, the practice of war takes a contrary view. Prisoners.

288. It is not necessary to discontinue espionage during an armistice (e), but the risks incurred by the perpetrators are the same as at other times. Espionage.

289. In the terms of the armistice there should be fixed a neutral zone, between so-called lines of demarcation, sufficiently wide to prevent any sort of conflict between the troops. No persons having the least connection with the armies should be permitted to enter this zone on any pretext, except as parlementaires or their parties, or by agreement for collection of dead and wounded (f). It must, however, be emphasized that such neutral zone does not exist unless it be specially stipulated by the armistice. Neutral zone.

290. In order to create a zone it may be necessary for one side or both sides to evacuate territory (g).

291. A road or roads should be fixed by which all communications between the two armies must pass during the armistice. Intercourse during armistices.

(a) In drawing up the protocol of the armistice concluded in Manchuria on the 16th September, 1905, it was proposed by the Russian envoy to forbid all "acts of hostility." This was considered too vague by the Japanese, and to avoid all difficulty it was arranged that each adversary should do what he liked inside his front line, except acts of combat and the sending of reinforcements (as mentioned in the last footnote). All acts, offensive and defensive, were permitted so long as they did not touch the enemy's line. In the suspension of arms concluded at Belfort on the 13th February, 1871, it was merely agreed that "the two parties will rest in their present positions." In the armistice after Majuba, in 1881, it was agreed that "each side promises to make no forward movement in advance of its present position, neither by armed parties nor by scouts; but each retains its liberty of movement within its own lines."

(b) The armistice proposed at Paris in November, 1870, was not concluded, as the Germans refused to permit revictualment. The leading case is the armistice of Treviso, 1801, in which it was permitted to send provisions to the garrison at Mantua every ten days. The amount was fixed at 15,000 rations of flour and 1,500 of forage, and other food in proportion. The inhabitants were allowed to receive the necessary provisions from time to time, but the French army was left free to take such measures as should be judged necessary to prevent the quantity exceeding the estimated daily consumption in proportion to the population.

(c) See definition of "occupied territory," see para. 341 below.

(d) See, however, para. 300 below.

(e) For example it is stated in General Baron von Müffling's *Aus meinen Leben* (Yorke's translation, p. 299), that Bülicher's system of espionage continued at work during the armistice of August, 1813.

(f) In the case of a suspension of arms for this purpose it may be sufficient to fix a line instead of a zone. It is generally desirable to define the zone or line on maps.

(g) This was proposed in the armistice between the Japanese and Russians in Korea.

Ch. XIV. 292. As a state of war continues to exist during an armistice, and as the goings and comings of the inhabitants in the positions of the two armies, and in the neutral zone, may offer inconvenience and facilitate espionage, it rests entirely with the contracting parties to settle in the terms of the armistice how far the relations imposed by war between the belligerent forces and the inhabitants of occupied territory and between the inhabitants of the belligerent countries are modified (*a*).

293. If nothing is said about inhabitants, each party has an absolute right to settle the question according to his own convenience in the territory over which he has power. Usually the intercourse between the two territories remains suspended just as during actual hostilities.

Violations
of
armistices.

294. Any serious violation of an armistice by one of the parties gives the other party the right of denouncing it, and in cases of urgency hostilities can even be recommenced at once (*b*), although a certain time between giving notice of cessation and resumption of hostilities may have been stipulated for. The violation must, however, be a grave one to justify a denunciation and *a fortiori* to authorize an immediate resumption of hostilities (*c*).

295. A deliberate advance or pushing on of works beyond the line agreed upon (*d*), the seizure of any point outside the lines, or the utilization of the occasion to withdraw troops from an unfavourable position commanded by the enemy (*e*), or any violation of an express condition would, as a rule, constitute a grave breach.

296. It would be perfidy to denounce an armistice for a motive or under a pretext more or less specious and to surprise the enemy without giving him time to put himself on his guard.

297. Unless there be great urgency, there should always be a delay between denunciation and resumption of hostilities.

298. The existence of an armistice is no reason for the relaxation of vigilance in the service of protection, or of the readiness of troops for action, or for exhibiting positions to the enemy which he could not detect during combat (*f*).

299. The violation of the terms of an armistice by individuals does not entitle the injured party to do more than demand the punishment of the offenders and compensation for the losses sustained, if any (*g*). There is no justification in such circumstances

(*a*) Hague Rules, 39.

(*b*) Hague Rules, 40.

(*c*) Hague Conference, 1864, p. 148.

(*d*) Thus, on the 13th August, 1813, during the armistice which was to expire on the 17th August, Blücher received information from various commanders that French patrols had entered the neutral zone, and that requisitions were being carried out in it. He considered himself absolved from respecting it, and issued orders to advance into it that evening, but not to cross the enemy's line unless attacked (*Herbstfeldzug*, 1813, by Major Friedrich, p. 259).

(*e*) The withdrawal of troops who are out of sight of the enemy is not perfidy, and may in certain circumstances be considered a ruse. Should knowledge of the move come to notice, it would not as a rule afford cause for immediate resumption of hostilities unless specially forbidden in the agreement. If the situation is such that a withdrawal unhindered (as at Mukden, see para. 151, footnote) would be of great advantage to the enemy, the armistice should be refused.

(*f*) At the second battle of Fredericksburg, 5th May, 1863, the Federals discovered the weakness of General Barksdale's force during a suspension of arms to collect the wounded after the second repulse. This knowledge gave them courage to persevere and succeed. (Military Memoirs of a Confederate, by General E. P. Alexander, p. 351.)

In the suspension of arms at Wynne's Hill, during the relief of Ladysmith, many of the burghers of the South African Republic stood up and thus disclosed the position of their trenches, which until then had not been located by their opponents. (History of the South African War, Vol. II, p. 602.)

(*g*) Hague Rules, 41.

for a renewal of hostilities, unless the behaviour of these individuals is approved of or sanctioned by their superiors. If, however, the violation of the armistice by individuals acting on their own initiative be repeated, and if it become evident that the adversary is unable to repress such abuses, there might be no other way, after proper protest, to obtain redress except by denouncing the armistice. Ch. XIV.

300. Soldiers captured in the act of breaking an armistice must be treated as prisoners of war, since the responsibility for such a violation lies not with them but with the commander (a). Should an individual soldier be captured who without orders committed a hostile act during an armistice, he may conveniently be handed over to his commander for punishment.

(iv.) Capitulations.

301. Capitulations are agreements entered into between the commanders of armed forces of belligerents concerning the terms of surrender of a body of troops, a fortress or other defended place, or of a particular district of the theatre of war. Surrenders of territory are sometimes designated as evacuations (b). Nature of capitulations.

302. The commanders of armed forces are presumed to be invested with powers to agree to capitulations, but they are responsible to their Governments should they exercise these powers in other cases than those of necessity (c).

303. Capitulations are, both in character and purpose, purely and exclusively military agreements, involving the abandonment of resistance by the portion of the enemy's forces which capitulates, and, as a rule, their becoming prisoners of war. Capitulations should therefore contain nothing but military stipulations. The questions at issue in the case of the surrender are the immediate possession of the place and the fate of the troops. The capitulation must therefore be limited to these questions in their local military sense, but conditions concerning the inhabitants and their privileges may nevertheless be inserted (d).

304. Stipulations in a capitulation to the effect that the surrendering troops shall never again bear arms against the forces of the conquering State, or that the sovereignty of a place or territory shall change hands would be invalid, inasmuch as power for such extensive purposes belongs only to the sovereign power of the State and cannot ever be presumed to be delegated to commanders (e). Such stipulations can become valid only on condition that they are ratified by the political authorities of both belligerents (f). Irregular stipulations.

305. The surrender of a place or force may be arranged by the political authorities of two States without the intervention of the Competent authorities.

(a) See, however, para. 287, above.

(b) *E.g.*, the evacuation of Portugal by the French under the terms of the Convention of Cintra, 1808.

(c) See para. 310 below.

The punishments for shamefully delivering up any garrison, place, post, etc., or doing any act calculated to imperil the success of H.M. forces (which might include granting too lenient terms to the enemy) are dealt with in the Army Act, s. 4.

(d) See para. 320 below.

(e) Thring, p. 301.

(f) The Convention of the capitulation of Verdun, 8th November, 1870, stipulated in art. 1 that the surrender was made on the express condition of the retrocession of the fortress and town to France at the conclusion of peace. This exceeded the powers of the contracting commanders, and created no obligation for their respective governments.

The text of the Convention is given in von Tiedemann's *Festungskrieg*, 1870-1, p. 129. It is not given in the German official history of the war.

Ch. XIV. military authorities (a); in this case the convention may contain other than military stipulations.

306. The competence of a commander to accept conditions of capitulation is limited to the troops immediately under his command and does not necessarily extend to detached forces, or to all the forts of a fortress. To avoid misunderstandings, capitulations should invariably state to what extent detached forces and outlying defences are included in the surrender of the main body (b).

307. Similarly the competence of a commander to grant conditions of capitulation is limited to those the fulfilment of which depends entirely upon the forces under his command (c). If he agrees, without the instructions of his Government, to conditions the granting of which is not implied in his powers, or the fulfilment of which depends upon forces other than his own, and upon superior officers, they may be repudiated.

308. Great care must therefore be taken before concluding any capitulation to ascertain that the competence of the opposing commander to complete the convention is unequivocal (d).

309. Should one of the parties insist on the condition that the consent of the sovereign or his government must be obtained, this ought to be definitely stated in the convention. In these circumstances the party granting such conditions should be careful to provide against any disadvantage resulting from non-ratification.

310. Abuse by a commander of the power vested in him does not of itself render invalid any compact which he may make with the enemy. If, however, he surrenders when he might have continued the defence, or upon worse terms than he might have made, or if he

(a) As, for instance, the surrender of the forts and garrison of Paris, which was included in the general armistice of the 28th January, 1871, signed by Count Bismarck and M. Jules Favre.

(b) Hague Conference, 1907, *Actes*, Vol. III, p. 25. The inclusion of Vedel's division and other French troops in Andalusia, in the capitulation of Dupont at Baylen, 1808, is an example of the practice.

(c) Thus, the Spanish authorities who signed the Convention of Andujar (Baylen) exceeded their powers by promising to send Dupont's army home by water. As the British fleet commanded the sea and was blockading Rochefort, the port which the capitulation assigned for the landing of the captive army, the concurrence of the British authorities was necessary before the Spaniards could carry out the agreement.

(d) The capitulation of El Arish of the 24th of January, 1800, made between the French General Kléber and the Turkish Grand Vizier, and approved by the British Admiral, Sir Sydney Smith, is an illustration of an invalid Convention. It was agreed that the French Army should evacuate Egypt, and be transported to France in vessels provided by the Turkish Government. Sir Sydney Smith was, however, only a local commander, and junior to Lord Keith, commanding the British Mediterranean fleet. The latter had on the 8th January, 1800, received from his Government secret orders not to agree to any capitulation stipulating the free return of Kléber's troops to France. Yet Sir Sydney Smith did not receive instructions based on these orders until the 22nd of February, after he had approved of the terms. General Kléber was notified by Lord Keith of the orders of the British Government, and he recommenced hostilities. The British Government, however, on being informed of Sir Sydney Smith's action, though disapproving of it, confirmed the Convention on the 28th March, 1800. Menou, the successor of Kléber, who had meantime been assassinated by an Arab, refused, as hostilities had been recommenced, to carry out the original convention (*Kléber, sa vie, sa correspondance*, p. 444 et seq. Alison, *History of Europe*, chapter XXXIV.).

The capitulation of Dresden, agreed on between General Gouvion St. Cyr and Generals Count Klenau and Tolstoi, the 11th November, 1813, which permitted the French garrison to return to France there to await exchange, was invalidated on the 19th November by Prince Schwarzenburg, on the grounds that it was not approved of by the allied sovereigns; Klenau and Tolstoi were removed from their commands, and the French became prisoners of war. A similar fate befell the capitulation of Dantzic, agreed on between General Rapp and the Duke of Wurtemberg on the 29th November, 1813. Owing to the ease and rapidity of communication such mistakes should not be possible in modern warfare.

grants too lenient terms, he is accountable to his own Government for his misconduct (a). Ch. XIV.

311. As capitulation means the act of surrendering to an enemy upon stipulated terms, individual soldiers or parties of soldiers who throw down their arms and surrender do not capitulate, but surrender purely and simply. Yet it may occur that small detached parties, or even individual soldiers, intend to surrender upon stipulated terms; in such a situation they are necessarily left to their own discretion, and the senior of the party or the individual, so far as concerns the party or his own person, may do everything which a commander might do with respect to himself and the troops under his command. Surrenders.

312. Negotiations for surrender may emanate from either side. The intention to surrender is frequently indicated by the hoisting of a white flag, and parlementaires are then sent to arrange for a suspension of arms and draw up and sign the capitulation (b). In many cases, however, the negotiations have been carried on without interruption of hostilities, and the white flag has been hoisted subsequently by arrangement as the sign of surrender. Negotiations.

313. No rules exist regarding the form of capitulations. They may therefore be concluded either orally or in writing, but for the reasons given in the section on armistices (c), it is most desirable, except in the case of unconditional surrenders, that they should be in writing. In the convention every condition, including the time and manner of execution, must be laid down in the most precise and unequivocal words. Usually the terms are given in a number of articles, while the details of execution and local interests are dealt with in an appendix (d). Form of capitulations.

314. In the terms of a capitulation the fate of the capitulating troops or of the surrendered fortress may be settled in the most varied manner, from unconditional surrender (e) to mere evacuation of territory under honourable conditions.

315. The expression "with the honours of war," which is sometimes used in capitulations, is usually construed to include the right to march with colours displayed, drums beating, bayonets Honours of war.

(a) See para. 303 above.

Marshal Bazaine was tried and convicted for the capitulation of Metz. The granting of the Convention of Cintra to Marshal Junot in 1808 was the subject of a Court of Inquiry.

(b) See para. 224.

At Sedan, 1870, and at Manila, 1898, when the white flag was hoisted on the walls by the defenders, parlementaires were sent from the attacking forces. Official account of the Franco-German War, Part I, Vol. II, p. 402, and Report of General Wesley Merritt (Report of Major-General Commanding the Army), 1898, p. 43.

The question of the significance of the white flag and the action to be taken when it is exhibited has been discussed, para. 229 *et seq.*

(c) See para. 273 above. The terms of the capitulation of Port Arthur are given in Appendix 17 at the end of this chapter.

(d) *E.g.*, in the capitulations of Metz and Port Arthur.

The last article in the capitulation of Verdun, 1870, was the following:—"Special points which may require settlement shall be arranged for in an appendix which shall have the same force as the present convention."

(e) As in the case of Pfalzburg on the 12th December, 1870. After a four months' siege provisions being exhausted, Commandant Taillant destroyed his artillery, rifles, and ammunition, and everything that the enemy could utilize for the purpose of war or exhibit as a trophy, and then informed the enemy that he surrendered at discretion. Other instances are the surrender of Osman Pasha after the final sortie from Plevna on the 10th December, 1877, and of General Cronje at Paardeburg in February, 1900.

Ch. XIV. fixed, and swords drawn; but the details of such arrangements should be precisely stated in the articles (a).

Unconditional
surrenders.

316. Even if a capitulation is unconditional the victor has now-days no longer the power of life and death over his prisoners, and is not absolved from observing the laws of war towards them.

Military
honour.

317. The Hague Rules only contain one article on the subject of capitulations, and this enacts that they must take into account the rules of military honour (b). The Hague Rules require, therefore, supplementing by the customary rules of warfare

Matters
requiring
mention.

318. The principal questions to be settled in the terms of a capitulation are: the fate of the capitulating troops and of any persons who may have assisted them, the handing over of material, the disarming of the troops, the pointing out of the mine defences, the evacuation and taking possession of the place, and the arrangements for the care of the sick and wounded. Usually the troops are formally declared to be prisoners of war, but the surrender may be made conditional on the situation being altered by the arrival of a relieving force within a certain period of time (c).

319. Provision may be made that the surrendering force shall not in every detail be treated as prisoners of war—for instance, that officers shall be allowed to retain their side arms (d). It may also be stipulated that the officers or soldiers shall be released on parole (e); that officers shall be permitted to retain the services of servants; that inhabitants who have assisted the troops as combatants or otherwise shall not be punished, and shall be released on giving up their arms (f); that civil officials are free to leave; that civil and military archives shall remain in custody of the officials of the vanquished party. When the evacuation or surrender of territory is the subject of the convention it may be desirable to make special provision respecting the inhabitants (g).

320. It may be necessary to arrange for taking over the civil government and Government property, to fix the exact time of the transfer of authority, to arrange for lists of the prisoners to be made and for the repatriation of prisoners, and to stipulate that certain forts or positions shall be handed over at once as a pledge of the fulfilment of the capitulation (h).

(a) The most favourable terms in the Franco-German war were granted to the garrison of Belfort under Colonel Denfert-Rochereau, who surrendered under instructions from his Government.

"In recognition of their brave defence the garrison are allowed free withdrawal with the honours of war. They will take away the eagles, colours, arms, horses, carriages, and the military telegraph apparatus, as also the baggage of the officers and kits of the men and the archives of the fortress." ("Official Account of the Franco-German War," Part V, Vol. III, App. CLXXXII.)

(b) Hague Rules, 35 (first paragraph).

(c) As at Ulm in 1805 art. 5 of the terms of surrender, which reads:—"If before midnight 25th October (inclusive) Austrian or Russian troops relieve the town from any side or gate the garrison may leave freely," etc.

(d) It should be distinctly stated whether or not this allows them to wear their swords at all times during captivity.

(e) It is very undesirable to ask for favourable terms for officers which do not apply to the men.

(f) This was done at Metz and at Port Arthur. As regards the private property of prisoners of war which is not portable, see para. 71 ante.

(g) The capitulation of the Cape of Good Hope to the British in 1795 provided for the prerogatives enjoyed by the inhabitants of the Colony, the recognition of the paper currency, the maintenance of public worship, the immunity of private and public property, and the modification of taxation. (Bulletins of the Campaign, 1795, pp. 160-1.)

(h) As was done at the capitulations of Paris in 1871, and Port Arthur in 1904.

321. The handing over of forts, arms, and material, and the transfer of authority can best be arranged by committees composed of members of both armies (a). Ch. XIV.
Handing over.

322. It is a customary rule of International Law that as soon as a capitulation has been signed the vanquished commander must abstain from all destruction, damage, and injury of the works, war material, and stores, unless he is entitled to interfere with them by the conditions of surrender (b). Nothing, however, prevents a commander who intends to surrender from destroying fortifications, war material and stores, the possession of which might assist the enemy, providing he does so before signing the capitulation (c). Damage and destruction after capitulation.

323. Once the terms of capitulation are settled they must be scrupulously observed by both parties (d); a serious breach of the accepted conditions of a capitulation entitles the adversary to an immediate renewal of hostilities without further notice. Breaches of capitulation.

324. A capitulation may be denounced if a party to it formally refuse to execute any clause which has been agreed upon, and it may be cancelled if it was obtained by a breach of faith (e). It Denunciations.

(a) In the appendix to the terms of surrender of Port Arthur, four committees were appointed, each to secure the execution of a particular article of the Convention. The first Committee dealt with arms, ammunition, and material of war, and was subdivided into four sub-committees which settled respectively: (i) forts, batteries, arms, ammunition, etc., of the land forces; (ii) war vessels and shipping; (iii) supplies; (iv) removal of dangerous objects. The second committee dealt with personnel; the third with the sick and wounded; and the fourth with the civil administration, finances, and the civil inhabitants. (Ariga, pp. 310-12.)

The terms of the capitulation of Port Arthur being the most recent example, and being drafted in accordance with the best precedents, are given in Appendix 17 in the original English text. The following conventions for capitulation are, among others, worthy of study:—

Saratoga, 1777	...	...	(See Trevelyan's American Revolution, Part III, p. 224 et seq.)
Cape of Good Hope, 1795	...	...	(See Bulletins from the London Gazette, 1795, p. 160.)
El Arish, 1800	...	...	(See Kléber's Correspondence, by Fajol, p. 430.)
Ulm, 1805	...	...	(See Alomberte and Colin's Campagne de 1805 en Allemagne, p. 851 et seq.)
Ointra, 1808	...	...	(See Oman's Peninsular War, Vol. I., p. 625.)
Baylen, 1808	...	...	(See Oman's Peninsular War, Vol. I., p. 621.)
Dresden, 1813	...	...	(See Mémoires of Gouvion St. Cyr IV., p. 484 et seq.)
Dantzic, 1813	...	...	(See Mémoires du Général Rapp, p. 434 et seq.)
Sedan, 1870	...	...	(See Official Account of the Franco-Prussian War.)
Strasbourg, 1870	...	...
Metz, 1870	...	...
Paris, Belfort, 1871	...	...	(See Correspondence respecting affairs of South Africa. C. 2950. 1881, Nos. 50, 63.)
Potchefstroom, 1881	...	...
Manila, 1898	...	...	(See Annual Report of the U.S.A. War Department for year ending 30th June, 1898, pp. 43 and 49.)

(b) Art. 144 of the Military Code of the United States expressly denies to the captulator the right "to demolish, destroy, or injure the works, arms, or ammunition in his possession during the time which elapses between the signing and the execution of the capitulation."

(c) The Court of Enquiry on the surrender of Metz blamed Marshal Bazaine for not having destroyed his material of war before signing the capitulation, as it proved of service to the enemy in continuing the war. *Procès Bazaine*, p. 11. See para. 314, footnote above, for Commandant Taillant's action at Pfalzburg in 1870.

(d) Hague Rules, 35.

Such deliberate violations of the terms of capitulation as were committed by the Government of the United States with regard to the British troops who surrendered at Saratoga in 1777, by the Southern Italian Bourbons with regard to the garrisons of the Neapolitan citadels in 1797, and the Junta of Seville with regard to the French troops who surrendered at Baylen in 1808, are unlikely to be repeated.

(e) The capitulation of Potchefstroom in 1881, which was obtained by a "breach of faith" on the part of Commandant Cronje in failing to notify to the garrison the conclusion of a cessation of hostilities as agreed on by the two commanders-in-chief, was annulled by desire of the Boer Government as soon as it was notified to them, and authority was given to re-garrison the place. (See the letter of General Joubert and the joint letter of Messrs. Kruger, Pretorius, and Joubert to Sir Evelyn Wood in Correspondence respecting affairs of South Africa (C. 2950), 1881, Nos. 50 and 63.)

Ch. XIV. may not, however, be annulled because one of the parties has been induced to agree to it by ruse, or from motives for which there is no justification, or by his own incapacity or feebleness.

Annulment.

325. A capitulation which took place after a general armistice has been agreed upon, and of which the parties to the capitulation had had no knowledge, is null and void, unless the armistice stipulated cessation of hostilities from the time when notification reaches the different forces concerned, and not from the date of signature (a).

(v.) *Passports, Safe-conducts, Safeguards, and Cartels.*

Passports.

326. A passport is a document given by a commander of belligerent forces to enemy subjects or others to enable them, within a limited or unlimited period, to travel free and unmolested within the district occupied by his forces. The passport may permit the bearer to travel either alone or accompanied by friends, and with or without servants and effects.

327. Passports may be granted by a commander on his own initiative, or by arrangement with the enemy or with a neutral Power, and only if granted by such arrangement do they come within the scope of International Law.

Safe-conducts.

328. A safe-conduct is a document given by a commander of belligerent forces to enemy subjects or others authorizing them, during a limited or unlimited period, to go into places which they could not reach without coming into collision with armed forces actively operating against the enemy—for instance, to visit or leave a besieged town.

329. A safe-conduct may, however, also be given to goods, and it comprises then the permission for such goods to be carried unmolested from or to a certain place—for instance, from or into a besieged town. Like passports, safe-conducts only fall within the scope of International Law when granted by arrangement with the enemy or a neutral Power.

Passes and permits.

330. The expressions “pass” and “permit” have in recent years been employed in the place of the older terms with, as a rule, the same distinction, although “pass” has sometimes had the signification of a general permission to do certain things, while “permit” has been confined to permission to do a particular act.

331. The exact term used, however, is of no great importance, provided that every particular with regard to the extent of the indulgences conferred by the document is enumerated with precision in it. The person to whom it is granted is inviolable as long and in so far as he strictly complies with the conditions imposed upon him.

332. Both passports (passes) and safe-conducts (permits) for individuals are non-transferable. On the other hand, such safe-conducts (permits) for goods, though they only apply to the articles named in them, may be transferred from one person to another, provided they do not designate the individual who is to introduce or remove the goods.

(a) The capitulation of Manila was signed by the local commanders-in-chief on the 14th August, 1898, but a general armistice had been agreed to by the Governments of Spain and the United States on the 12th August. Notice of this, however, did not reach the Philippines until the 16th August, owing to the interruption of the cable. The Spaniards contended that the capitulation had become void, but this the United States Government denied, maintaining that the protocol concerning the armistice had stipulated suspension of hostilities, not from the date of signature, but from the date of receipt of notification on the part of the respective commanders. (See Moore's Digest, Vol. VII, p. 324.)

333. Passports, as well as safe-conducts, may be revoked for good reasons of military expediency by the authority who issued them or his superior. Until revoked they are binding upon the person who granted them, as well as upon the successors. The reasons for revocation need not be given, but revocation must never be used as a means of securing the person of the holder, who is always to be allowed to withdraw in safety. Such passports and safe-conducts as have been granted only for a limited time cease to be available with the expiration of the period designated.

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Revocation
and
forfeiture.

334. If the holder commits any wrongful act, such as using the opportunity given by a passport or safe-conduct to obtain military information, or exceeds the terms of indulgence, the privilege may be withdrawn. Further, if the holder is considered by any person in authority to be behaving in a suspicious or irregular manner he may be arrested and the case investigated.

335. A safeguard is a party of soldiers posted or detailed by a commanding officer for the purpose of protecting some person or persons, or a particular village, mansion, or other property. Safeguards, like passports and safe-conducts, only fall within the scope of International Law when posted by arrangement with the enemy.

Safeguards.

336. Soldiers on duty as safeguards are inviolable on the part of the enemy, and it is customary, if they fall into his hands, to send them back to their army as soon as military exigencies permit. Enemy safeguards which have been posted without previous arrangement ought, nevertheless, to be treated in the same way, provided that the circumstances of the case prove that their posting was *bonâ fide*.

337. The term "safeguard" is also employed to mean a written order left by an advancing commander with an enemy subject, or posted upon enemy property, requesting the succeeding commander to grant protection to the individual or property concerned.

338. A cartel, in the wider sense of the term, is used to signify a convention concluded between belligerents for the purpose of permitting certain kinds of non-hostile intercourse which would otherwise be prevented by the conditions of war. For instance, communication by post, trade in certain commodities, and such like, may be agreed upon by a cartel. As used in a strictly military sense, however, a cartel means an agreement for the exchange of prisoners of war (a).

Cartels.

339. A cartel ship is a vessel engaged in the exchange of prisoners or in carrying official communications to the enemy. Such a ship is considered inviolable, but must not engage in any hostilities or carry any implements of war except a signal gun (b).

Cartel
ships.

(a) See para. 111.

(b) The word "cartel" has been used for the ship itself, as in the following extract from the *Times* of 17th November, 1807, reprinted on 17th November, 1907:—

"After the recent declaration in the Paris papers that no further intercourse with England could be on any account permitted, and that even the sailing of the Carrels between Morlaix and Plymouth would be prohibited, the town was somewhat astonished yesterday by the report of the arrival of a French Flag of Truce in the Downs. A schooner, bearing the National flag, was said to have passed by Dover, at three o'clock on Sunday, under a press of sail, and came into the Downs soon after, accompanied by the 'Calypso' sloop of war. The Deal letters of yesterday afford no satisfactory information upon this subject."

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VIII.—OCCUPATION OF ENEMY TERRITORY.

(i.) *Establishment of Occupation.*

General effects.

340. The military occupation of enemy territory initiates a special relationship between the occupant and the population (a) involving on each side certain rights and duties. It affects the general administration of the territory, the persons of the inhabitants, both private and public property, and has various other grave consequences. The subject is legislated for in the Hague Rules, Articles 42 to 58.

Definition.

341. According to these Rules, "Territory is considered occupied when actually placed under the authority of the hostile army. The occupation extends only to the territories where such authority has been established and is in a position to assert itself (b)."

342. This definition is not precise, but it is as precise as a legal definition of such a kind of fact can be, and there should, in practice, be no great difficulty in understanding it.

Invasion.

343. Invasion is not necessarily occupation, although as a rule occupation will be coincident with invasion (c). Reconnoitring parties, flank guards, raiding or flying columns, and similar bodies which move on or retire after carrying out their special mission, cannot, however, be said to occupy the country which they have traversed. They certainly occupy every locality of which they are in possession and where they set up a temporary administration, but such occupation ceases the moment they move on or retire (d).

Occupation must be effective.

344. Occupation must be actual and effective, that is, there must be more than a mere declaration or proclamation that possession has been taken (e), or that there is the intention of taking possession. It does not take effect merely because the principal forces of the country have been defeated. On the other hand, to occupy a district it is not necessary to keep troops permanently stationed in every isolated house, village, or town. It is sufficient that the national forces should not be in possession, that the inhabitants have been disarmed, that measures have been taken to protect life and property and to secure the prevalence of order, and that, should it be necessary, troops can within reasonable time be sent to make the authority of the occupying army felt. It is a matter of indifference by what means and in what ways the authority is exercised, whether by fixed garrisons or flying columns, by large forces or by small. The manner would usually vary with the density of the population.

345. The fact that there is a fortress or defended zone still in possession of the national forces within an occupied district does not make the occupation of the remainder invalid, provided such fortress is invested (f). The consent of the inhabitants is in no case necessary; it suffices that they have not risen in arms, but have passively submitted.

(a) That is, persons who do not take an active part in the military operations, and are not attached to the army, in particular women and children, the aged, workmen, and cultivators of the soil.

(b) Hague Rules, 42.

(c) Early's invasion of Maryland, in July, 1864, is an instance of invasion without occupation.

(d) Although the rules here discussed apply primarily in "occupied territory," they should be observed as far as possible in territories through which troops are passing and even on the battlefield.

(e) Thus it would not be sufficient to post a notice in one part of a district and declare that the whole district was thereby occupied.

(f) Thus when Alsace was declared occupied on the 14th August, 1870, the fortresses in that province were still uncaptured, but except for the sieges it had ceased to be the theatre of active operations.

346. It has been proposed as a test of occupation (a) that two conditions should be satisfied: firstly, that the legitimate Government should, by the act of the invader, be rendered incapable of publicly exercising its authority; secondly, that the invader should be in a position to substitute his own authority for that of the legitimate Government. These conditions afford in most cases a useful guide, but it must not be forgotten that Article 42 of the Hague Rules stipulates distinctly that the authority of the occupant must actually have been established.

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—
Suggested
test of
occupation.

347. In the interests of the inhabitants it is most desirable, though in strict law not necessary, that the invader should take measures to make known by proclamation the fact of the establishment of occupation and the area over which it extends. He should at the same time summarize the effects which result from the new state of affairs (b).

Proclamation
of
occupation.

348. It is also desirable, if the locality concerned is not held by an armed force after establishment of occupation, that the authority claimed should continue to be exhibited in some visible manner, for instance, by the presence of a commissioner, or of post or telegraph officials; by the occasional visits of a few troops; or by the enforcement of a system of passes.

Exhibition
of
authority.

349. The test of the commencement of occupation is the establishment of the occupant's authority by the presence of a sufficient force following on the cessation of local resistance in consequence of the surrender, defeat or withdrawal of the enemy's forces, and the submission of the inhabitants. In practice the moment may be difficult to determine, but considerable latitude should be allowed.

Test of
commence-
ment of
occupation.

350. Occupation must not only be acquired but maintained. If the invader is driven out of a district by the enemy or voluntarily evacuates it, or if the district frees itself from the exercise of his authority by a *levée en masse*, so that the legitimate government is able to resume its authority, occupation at once ceases.

351. Occupation does not necessarily cease because the occupant, after having disarmed the inhabitants and made arrangements for the administration of the district, marches on to encounter the enemy, leaving only a few troops behind.

Mainten-
ance of
occupation.

352. Occupation does not become invalid through the existence of rebellion on the part of the inhabitants, or through occasional successes of guerilla bands. Even a momentary triumphant rebellion is not sufficient to interrupt or terminate occupation, provided that the authority of the legitimate government is not effectively re-established, and further provided that the occupant takes at once such measures as immediately suppress the rebellion. If, however, the power of the occupant is effectively displaced for any length of time his position towards the inhabitants is the same as before occupation.

(a) French Manual, p. 67.

(b) The practice in this matter in past wars appears to have been variable. Frequently the inhabitants were only warned to behave peaceably, not to communicate with the enemy, and to comply with requisitions; as, for instance, when the British troops entered France in 1813 and 1815 (Wellington Despatches, VIII, p. 159, see App. 18 at the end of this chapter). In 1870, the Germans generally, but not always, proclaimed military jurisdiction directly they took possession of a locality by reading or posting a notice (sometimes only one notice in a canton) which gave a list of offences against the troops for which the penalty of death would be inflicted. (Brenet, p. 187.) In 1894, in China, the Japanese proclamations were similar to those issued by the Duke of Wellington. (Ariga, *La guerre Chino-Japonaise*, ch. IV, p. 43.) For further examination of the subject see paras. 446 and 447.

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(ii.) *General Effects of Occupation.*

Occupation
is not
subjugation-

353. The occupation of enemy territory during war creates a condition entirely different from subjugation through annexation of the territory. During the occupation by the enemy the sovereignty of the legitimate owner of the territory is only temporarily latent, but it still exists and in no way passes to the occupant. The latter's rights are merely transitory, and he should only exercise such power as is necessary for the purposes of the war, the maintenance of order and safety, and the proper administration of the country.

354. It is no longer considered permissible for him to work his will unhindered, altering the existing form of government (a), upsetting the constitution and the domestic laws, and ignoring the rights of the inhabitants.

355. The occupant, therefore, must not treat the country as part of his own territory, nor consider the inhabitants as his lawful subjects. He may, however, demand and enforce such measure of obedience as is necessary for the security of his forces, the maintenance of order, and the proper administration of the country.

Allegiance.

356. The victor is distinctly "forbidden to force the inhabitants of occupied territory to swear allegiance to him" (b), for they remain the subjects of their Sovereign and continue to have patriotic duties to their country.

Effects of
occupation
on the in-
habitants.

357. The occupant can claim certain services from the inhabitants and may impose upon them such restrictions as he judges necessary. He can, under certain conditions, use, requisition, seize and destroy their property, and they may in various other ways have to suffer under the effects of the war (c).

Restora-
tion of
tran-
quillity.

358. The authority of the power of the State having passed *de facto* into the hands of the occupant, the latter has the duty to do all in his power to restore and ensure, so far as possible, public order and safety (d).

(iii.) *Administration of Occupied Territory.*

Cessation
of ordinary
functions
of Govern-
ment.

359. The legislative, executive and administrative functions of the national government, whether of a general, provincial, or local character, cease on occupation. The civil servants and other officials of the local government may, if the occupant tacitly or expressly consent, continue to perform their ordinary routine duties, but except in case of military necessity they cannot be compelled by force to do so.

360. In most cases the higher officials will have fled or, if still present, will refuse their assistance (e), and an administration has

(a) As the French armies did at the end of the 18th and commencement of the 19th century.

(b) Hague Rules, 45. It is unnecessary to make them take an oath to abstain from hostilities, commonly called an oath of neutrality, for they can be punished, as will be seen, for any departure from the attitude of non-interference in the war.

(c) See, as regards inhabitants, para. 46; neutral persons resident in occupied territory, para. 507; and property, para. 405 *et seq.*

(d) Hague Rules, 43.

(e) For the duties of officials of occupied territory, see para. 393 *et seq.*

therefore to be formed (a); but officials of local authorities, not directly depending on the central political power, such as those of counties, municipalities, boroughs, and parishes, will generally remain, and their services may conveniently be utilized as agents of order. Ch. XIV.

361. It is of little consequence whether the government imposed by the invader is called military or civil government (b), for in either case it is a government imposed by the necessity of war and, so far as it concerns the inhabitants or the rest of the world, the laws of war alone determine the legality of its acts. Legal position of occupant.

362. Political laws and constitutional privileges are as a matter of course suspended during occupation: for instance, the laws affecting recruitment (c) and those concerning suffrage (d), the right of assembly, the right to bear arms, and the freedom of the press. Special orders may, however, be necessary to make the suspension of the laws known to the population of the occupied territory, for example, an order forbidding able-bodied men of military age to quit the occupied territory (e). Suspension of certain laws and privileges.

363. Neither the ordinary civil nor criminal jurisdiction in force in the home territory of the occupant is considered to extend over occupied territory (f). Laws generally continue in force.

(a) In 1870-1, in France, the Germans as they advanced formed four occupied districts for administrative purposes with headquarters at Strasbourg, Metz, Rheims, and Versailles. A governor-general (who had under his orders all troops within the district not belonging to a particular army) was placed in charge of each district and was assisted by a civil commissioner whose duties were the direction of general administration of the district, the collection of taxes, and, jointly with the intendants of the various army corps, the arrangement of requisitions and contributions. The commissioner was invested with the powers conferred by French legislation on ministers (excluding railways, telegraphs and posts); and he nominated *préfets* for departments, *sous-préfets* for *arrondissements*, etc. As the majority of French officials had fled, a number of German ones had to be summoned to France, but it was found impossible to provide for every post, and the functions of several offices were often carried out by one bureau. Thus in place of the administrations dealing with direct taxes, registration, stamp and lands, a single bureau of the director of taxation, with the functions of treasurer-general, was nominated; the commissioners of police were also appointed controllers of taxation. (Official History of the Franco-German War, Part I, Vol. II, App. LIV, and Part II, Vol. III, pp. 137-139. Löning, 1872, p. 637 *et seq.*, and 1873, p. 69. See App. 19 at the end of this chapter.)

In 1904-5 the Japanese formed commissions of military administration in the districts from which the Russians retired, under the commanders of the army of occupation in Korea and the army of occupation of Liao-tung, with commissioners in most of the principal towns. But as these districts were in reality neutral territory and as the legitimate power of the state had not passed *de facto* into the hands of the Japanese, the commissioners had not to arrange for the maintenance of order and security, except in so far as the local authorities were impotent to do so, and in so far as the disorders which might result from their impotence would be a cause of prejudice to the Japanese army. The commissioners were not, therefore, appointed to administer the territories, but to smooth over any difficulties which might arise between the local officials and the army, to maintain good relations, and to ensure proper sanitary measures. The commissioners and their staffs were chosen from officers with special knowledge of the life, sentiments, and customs of the Chinese. (Ariga, p. 423.)

(b) It should be noted that by British practice martial law is proclaimed in British territory, military government in an enemy's country. The regulations of the United States provide for martial law in an enemy's country.

(c) The Germans in France, 1870-1, prevented conscription in the occupied districts.

(d) The Germans in France, 1870-1, permitted municipal elections to be held in view of maintenance of order (*Delérot Versailles pendant l'occupation*, p. 41). Permission for the general elections which took place at the close of the war was arranged for in the terms of the armistice.

(e) Hague Rules, 43.

(f) The German military code (*Militärstrafgesetzbuch* of 20th June, 1872, para. 161) makes the following provision for the punishment of offences in occupied territory: "A foreigner or a German who, in foreign territory occupied by German troops, commits an act punishable by the laws of the Empire, against German troops or their followers or against any authority established by order of the Emperor, shall be punished exactly as if he had committed it in federal territory."

Ch. XIV. 364. Therefore the civil and penal laws of the occupied country continue as a rule to be valid, the courts which administer them are permitted to sit, and all crimes of the inhabitants not of a military nature or not affecting the safety of the army are left to their jurisdiction.

365. The officers, men, and followers of the occupying force are not answerable to the jurisdiction of these courts; they are dealt with by the military law of their army (*a*).

Power to
alter and
suspend
laws.

366. If demanded by the exigencies of war, it is within the power of the occupant to alter or suspend any of the existing laws (*b*), or to promulgate new ones, but important changes can seldom be necessary and should be avoided as far as possible.

367. The commander of an occupying army is expressly prohibited from declaring, either in his own name or in that of his Government, extinguished, suspended, or unenforceable in a Court of Law, the rights and rights of action of enemy subjects (*c*).

The courts.

368. The ordinary courts of justice and the laws they administer should be suspended only when the refusal of the judges and magistrates to act (*d*) or the behaviour of the inhabitants make it necessary. In such case the occupant must establish courts of his own and make this measure known to the inhabitants.

Collection
of taxes
and rates.

369. The financial administration passes into the hands of the occupant, but all fiscal laws remain operative. If he collect the taxes, dues, and tolls payable to the State, he is in consequence bound to defray the expenses of the administration of the occupied territory to the same extent as the national government was liable (*e*). The collection must be made, as far as is possible, in accordance with the rules in existence and the assessment in force. The occupant is entitled to appropriate to the use of the army any balance remaining over after the disbursement of these expenses. The occupant may use local rates only for the purposes for which they are raised.

370. The inhabitants of occupied territory expose themselves to the punishments for war treason in case they contribute to funds which enable their legitimate government to prosecute the war (*f*).

371. The invader should not change the way of collecting taxes unless compelled to do so by the flight and ill-will of the officials. If a breakdown occurs for this reason (*g*), it is a good practice to allot the total sum usually paid among the districts, towns, communities, and parishes, to impose a head tax designed to bring in the same amount, and to make the local authorities responsible for its collection, by imposing a fine upon them for delay, or by otherwise bringing pressure to bear on them (*h*).

New taxes
forbidden.

372. The occupant must not create new taxes, as that is the right of the legitimate Sovereign, and temporary possession does not

(*a*) Thring, p. 315.

(*b*) He will naturally alter any laws, the application of which would be detrimental to his military interests.

(*c*) Hague Rules, 23 (*h*).

(*d*) See para. 401, second footnote.

(*e*) Hague Rules, 48.

(*f*) See para. 441 *et seq.*

(*g*) For the duty of officials in occupied territory see para. 393 *et seq.*

(*h*) The Germans in France, 1870-1, raised in Lorraine one direct tax equal to the sum of the direct taxes taken from the budget plus the average of the indirect taxes for the two preceding years. After an attempt to utilize the nominal rolls had failed, it was collected by a capitation tax of 25 to 50 francs. When towns were recalcitrant a demurrage of 5 per cent. per day was added. If eight days passed without payment hostages (see footnote, para. 464 below) were taken and sent to Germany, and troops were quartered on the inhabitants. Brenet, pp. 181-2.

confer it (a) ; but, as will be seen, he may raise money by contribution (b). Ch. XIV.

373. The occupant may place such restrictions and conditions upon all commercial intercourse with the occupied territory as he may deem suitable for his military purpose. He may likewise remove existing restrictions, for instance, suspend the customs tariff in force (c). Commercial intercourse.

374. He may impose censorship, limit or prohibit telegraphic and postal correspondence, and need not give facilities in these matters to the inhabitants unless the exigencies of war permit it, and unless the native officials render assistance (d). Censorship and correspondence.

375. Existing press laws need not be respected. The publication of newspapers may be prohibited, or permitted under restrictions (e). The circulation of newspapers issued in unoccupied parts of the country and in neutral countries may be stopped. Control of press.

376. All means of transportation, public and private, come under the authority of the occupant, and, if he does not seize and utilize them, he may limit their operation (f). Restrictions on movement.

377. He may withdraw from individuals the right to change residence, restrict freedom of internal movement, forbid visits to certain districts, and immigration, and insist on all persons providing themselves with an identification pass.

378. Public worship must be permitted and religious convictions respected (g). If the salaries of the clergy are paid by the State they must be continued (h). The clergy must refrain from reference to politics, and if they use their position to incite the population to resistance or revolt they may be dealt with as war criminals (i). Religious observances.

379. Similarly schools and educational establishments must be permitted to continue their ordinary activity, provided that the teachers refrain from references to politics and submit to inspection and control by the authorities appointed. If these conditions are not complied with the establishments may be closed (j). Education.

380. Hospitals, asylums, and similar institutions must be kept open. All the usual sanitary measures must be continued and such additional precautions ordered as may be considered necessary, the inhabitants being compelled to carry them out. The use of water, fuel, and illuminants may, if necessary, be limited on account of their value as war supplies. Medical and sanitary organization.

381. In case of necessity the inhabitants may be called on to do police duty, to assist the paid police force in the maintenance of duty.

(a) There is no reason why he should not suspend certain taxes. Thus in 1870 the Germans in France suspended the tobacco monopoly. Loening, 1872, p. 224.

(b) See para. 423 below.

(c) The Germans in France, 1870-1, suspended the French custom tariff as between the occupied districts and Germany. Loening, 1872, p. 629.

(d) The Germans in France, 1870-1, after the French postal officials refused assistance, took over the service and received letters but did not distribute them. Sometimes these were handed over *en bloc* to the Maire, who arranged for their delivery by the former postmen ; in other cases it was necessary to call personally for them. The rate of postage was raised 50 per cent. (Brenet, p. 171.)

(e) The Germans in France, 1870-1, demanded that the names of the manager, editor, proprietor, and administrator should be reported at the prefecture, that two signed copies of the journal should be deposited before publication ; that no news about the operations, except that which was communicated by the General Staff, should be issued, and that German official notices should be inserted gratuitously. It was forbidden to publish articles of a hostile tendency, or criticisms of the authorities.

(f) Hague Rules, 53. For further information as to transport see para. 415 below.

(g) Hague Rules, 46.

(h) Provided that the occupant collects the taxes, &c., payable to the State. Hague Rules, 45.

(i) See para. 441 below.

(j) The Germans in France, 1870-1, closed three Lycées the heads of which refused to permit inspection.

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Oh. XIV. — public order, to aid in the extinction of fires or to do any other duty that may be required of citizens for the public good.

(iv.) *Effects of Occupation on the Population (a).*

Limitation
on
obedience
to be
demanded
from in-
habitants.

382. It has already been stated that obedience to the occupant is one of the implied conditions of the special position accorded to the peaceful inhabitants. Practically they must give to his administration the same obedience, short of acknowledging his sovereignty, which they rendered to their own Government before the occupation. The claim to obedience is, however, limited by the three rules (i) that "a belligerent is forbidden to compel the subjects of the hostile party to take part in the operations of war directed against their own country even if they were in the service of the belligerent before the commencement of the war" (b); (ii), that the services demanded of inhabitants shall be "of such nature as not to involve them in the obligation of taking part in military operations against their own country" (c); and (iii) that "a belligerent is forbidden to compel the inhabitants of territory occupied by him to furnish information about the army of the other belligerent, or about its means of defence" (d).

Rights of
inhabitants.

383. It is the duty of the occupant to see that the lives of inhabitants are respected (e), that their domestic peace and honour are not disturbed, that their religious convictions are not interfered with, and generally that duress, unlawful and criminal attacks on their persons, and felonious actions as regards their property are just as punishable as in times of peace.

Duties of
inhabitants.

384. In return for this considerate treatment it is the duty of the inhabitants to behave in an absolutely peaceful manner, to carry on their ordinary pursuits as far as is possible, to take part in no way in the hostilities, to refrain from every injury to the troops of the occupant, and from any act prejudicial to their operations, and to render obedience to the officials of the occupant. Any violation of this duty is punishable by the occupant (f).

Collective
punishment

385. No collective penalty, pecuniary or otherwise, may, however, be inflicted on the population on account of the acts of individuals for which it cannot be regarded as collectively responsible (g).

(a) The case of neutral persons resident in occupied territory is dealt with in paras. 465 *et seq.*

(b) Hague Rules, 23, last paragraph.

(c) Hague Rules, 52.

(d) Hague Rules, 44. This rule excludes the impressment of guides. (Hague Conference, 1907, *Actes*, Vol. III, pp. 123-126.) It is really a special case of Rule 23 last paragraph; but because the means of acquiring information has thus been expressly limited, it is not to be understood that acts which have not been particularly specified are on that account permissible. Austria-Hungary, Bulgaria, Germany, Japan, Montenegro, Russia, and Rumania have made reserves in regard to this Article, and therefore adhere to the ancient right of forcing inhabitants to act as guides. In practice patrols will seek information as heretofore. It has long ceased to be the custom to extort information under threat of death, the value of intelligence supplied under compulsion being very small. (Hague Conference, 1907, *Actes*, Vol. III, pp. 138-141.)

(e) Hague Rules, 46. The respect for their lives means that they must not be arbitrarily killed, and that they shall not be executed without trial.

(f) See para. 441 *et seq.*

(g) Hague Rules, 50. Yet this does not prejudice the question of reprisals. See para. 435 *et seq.*

The Japanese in Manchuria by proclamation ordered the inhabitants of a village to concert to prevent the destruction of a telegraph line and a railway within the limits of the village, and notified that the entire village would be liable to a fine in case of damage occurring. Professor Ariga, however, states that the Japanese went no further than menace, and that he knows of no case of a collective punishment being really executed. (Ariga, p. 388.) It would, of course, be contrary to the Hague Rules to inflict a collective punishment on a village because a bridge for which it had been made responsible was destroyed by a raiding party of the belligerent forces; but if certain inhabitants concealed such a party on their property they might as individuals be punished.

386. If, contrary to the duty of the inhabitants to remain peaceful, hostile acts are committed by individual inhabitants, a belligerent is justified in requiring the aid of the population to prevent their recurrence and, in serious and urgent cases in resorting to reprisals (a). **Ch. XIV.**
Reprisals.

387. An act of disobedience is not excusable because it is committed in consequence of the orders of the legitimate Government, and any attempt to keep up relations with that Government or to act in understanding with it, to the detriment of the occupant, is punishable as war treason.

388. The personal service of the inhabitants may be requisitioned for the needs of the army. Thus professional men and tradesmen, such as surgeons, physicians, pharmacists, electricians, coach builders, smiths, carpenters, butchers, bakers, etc., employees of gas, electric light, and water works, and of sanitary boards may be called on to render service in connection with their ordinary vocations. The officials and employees of railways, canals, river steamship companies, telegraphs, telephones, postal and similar services, and drivers of transport, whether employed by the State or private companies, may similarly be requisitioned to perform their professional work, provided the services required do not directly concern the operations of war against their own country (b). **Requisitions of personal services of inhabitants.**

389. The occupant can requisition labour to restore the general condition of the country to that of peace, e.g., to repair roads, bridges, railways and to bury the dead and collect wounded. Inhabitants owe obedience when called on to carry out measures for the ordinary purposes of government, and, as already stated, (c) to do police and similar work.

390. It is unusual and would be generally impolitic to requisition the services of inhabitants for the superintendence or organization of labour or work. Yet the authorities may be ordered to provide the number of labourers required for legitimate purposes.

391. The prohibition to compel inhabitants to take part in the operations of war against their own country excludes their being requisitioned to construct entrenchments and fortifications (d), although nothing prevents their being offered payment to induce them to undertake such work voluntarily. It would, however, not be wise to use inhabitants indiscriminately for such purpose, since they might convey to the enemy information as to the nature of the works.

392. Services for legitimate purposes may, if necessary, be obtained by force, and the refusal to work may be met by punishment. As a rule, however, it will be more politic to offer good wages, because these frequently prove an irresistible attraction in time of war. **Payment for services.**

(a) See para. 452 *et seq.*

(b) Hague Rules, 52. This would not exclude their being employed to remove wounded or to bring up baggage, supplies and stores.

(c) See para. 386. The distinction between such requisition of personal services as is permitted or not, is a delicate question on which there is some difference of opinion. In order to prevent any misunderstanding it was proposed at the Hague Conference, 1907 (*Actes*, Vol. III, pp. 120-22) to insert the words "as combatants" after "take part" in Hague Rule, 23, leaving the belligerents free to demand any other service of inhabitants. The proposal, was, however, rejected. Professor Ariga considers an order to repair roads as "irreproachable in law." (Ariga, p. 468, footnote.)

(d) Hague Conference, *Actes*, Vol. III, pp. 120-22.

Ch. XIV.

(v.) *The Situation and Duties of Officials in Occupied Territory.*

Continu-
ance in
office.

393. Whether Government and local officials should voluntarily remain at their posts, and whether the occupant should continue them in their posts if they consent to stay, will depend on their particular functions and other circumstances. The occupant, except when forced by military necessity, must not compel such persons to remain in office against their will.

Municipal
officials.

394. Usually such officials will receive instructions from their Government as to the course of action to be pursued (a), but in the absence of such instructions they will use their own judgment. For the safety of life and property some should remain to hand over civil authority to the invader (b).

395. In the past Government officials have usually withdrawn, whereas local municipal officials have often remained. It is recognized that they will at times best fulfil their moral duty towards their own people if they continue in office in the presence of the invader (c). For if they withdraw there will be disorder and confusion; while if they remain at their posts order and safety are better secured. They should not, however, be called on to act as intermediaries of the occupant, if by so doing they would forward military operations.

Effect of
flight of
officials.

396. The general desertion of the officials must occasion the occupant great difficulties. He has to create new organs to execute his decisions, and, as his employees know neither the country nor the people, it will be only after a considerable lapse of time that they can familiarize themselves with their new charge. The inhabitants rather than the invader will suffer by the withdrawal of the judges, magistrates, sanitary and police authorities, and there would be no object in the staff of museums and libraries abandoning their posts. Railway, postal, telegraph, and telephone officials, whether State or otherwise, will, however, almost necessarily cease work.

Assurances
of fidelity.

397. Unless their own acts render their removal necessary, the occupant will in most cases invite officials to remain at their posts, promising to them their salaries.

398. The occupant may require such officials as continue at their posts to take an oath to perform their official duties conscientiously. As such an oath, however, might be objected to by the officials as well as by the population, it will, as a rule, be advisable not to require an oath but merely to ask for an assurance that they will loyally fulfil the service confided to them and will place no obstacle in the way of the occupying force (d).

(a) The Prussian regulations for the Landsturm, 1813, laid down, "If a town is occupied by the enemy the authorities will be considered suppressed and no one is bound to obey them." In 1866, when Prussia invaded Bohemia the Austrian Government ordered all functionaries, including the police, to abandon the territory.

In Alsace-Lorraine, in 1870, the higher functionaries left, but many of the subordinate ones remained, until a decree of Gambetta, 1st November, 1870, ordered them to abandon their employment under penalty of loss of their pensions. Loening, 1872, p. 641.

(b) In particular the police, temporary or otherwise. The complete withdrawal of the Russian administration from Dalny, in 1904, before the arrival of the Japanese, resulted in the looting of the town by the Chinese inhabitants. (Ariga, p. 352.)

(c) Hague Conference, 1899, p. 148.

(d) The Germans in France, 1870-1, demanded the following declaration of the French postal officials: "I am ready to obey without opposition the orders of the postal authorities established in the French occupied territory by the German troops, and I promise to avoid all that can injure the interests of the German Powers and their armies." In consequence the French officials declined to assist. Brenet, p. 171.

399. The occupant need not enquire into the credentials of officials found in authority at the moment of occupation. Ch. XIV.

400. It is not a hostile act for an official to resign after having taken service under the occupant or having continued in it. Resignation.

401. The occupant being the administrator of the country can remove and instal officials (a). Even judicial functionaries may be deposed if they refuse obedience to the occupant (b). Removal.

402. The salaries of officials who continue to do duty must be paid by the occupant if he collects the taxes of the occupied territory (c). Salaries.

403. Such wrongful acts of officials as constitute ordinary crimes are to be punished according to the law of the land, but any act to the disadvantage or damage of the occupying army may be dealt with as war treason (d). Offences.

404. If an official is considered dangerous to the interests of the occupant, he may, according to the merits of the case, be removed, made a prisoner of war, or expelled from the occupied territory.

IX.—TREATMENT OF ENEMY PROPERTY (e).

405. The unlimited right to seize and take enemy property of every kind no longer exists (f). Booty.

406. The destruction or seizure of enemy property is forbidden, whether it belongs to private individuals or to the State, unless the damage or taking is imperatively demanded by the necessities of war (g). General rule as to interference with property.

(i.) Private Property.

407. Private property must be respected; it may not be confiscated or pillaged, even if found in a town or place taken by assault (h). This prohibition in its ordinary sense is no new rule, but has for a long time past been embodied in the regulations of every civilized army, for nothing is more demoralizing to troops or more subversive of discipline than plundering. Theft and robbery are as punishable in war as in peace, and the soldier in enemy country must observe the same respect for property as in his garrison at home. The rule that private property must be General rules as to interference with private property.

(a) When the French occupied districts were disturbed in January, 1871, by the rumours of the success of Bourbaki's movement, the Germans considered it necessary to discharge a number of French officials. Loening, 1872, p. 642.

(b) During the occupation of Nancy in 1870-1 all the French judges of the Court of Appeal at Nancy were removed by the invader and replaced by Germans, because no arrangement could be come to with regard to the form of words to be used in delivering judgment. After the fall of the Empire and the proclamation of the French Republic, the Court commenced to pronounce its verdicts "In the name of the French people and Government." As Germany had not yet recognized the Republic, the German authorities ordered the Court to use the formula "In the name of the High German Powers occupying Alsace and Lorraine," but gave it to understand that if it objected to these words, they were prepared to accept "In the name of the Emperor of the French," as Napoleon III had not abdicated. The Court, however, refused to pronounce its verdicts otherwise, and suspended its sittings. Bluntschli (*Völkerrecht*, § 547) correctly maintains that the most natural solution of the difficulty would have been to have used the neutral formula "In the name of the Law."

(c) Hague Rules, 48.

(d) See para. 441 below.

(e) See "Instructions for the requisitioning of supplies, transport, stores, animals, labour, etc., in the Field": App. XXII of the "Supply Manual," 1900, and Field Service Regulations, Part II, 1909, p. 62.

(f) Whenever booty is still admissible and therefore taken, it becomes the property of the State and not of the individuals who capture it. The former practice by which booty was sold and the proceeds divided amongst the captors has vanished. For property on the battlefield see para. 423 below.

(g) Hague Rules, 23 (g).

(h) Hague Rules, 28, 46 and 47.

Ch. XIV. respected has, however, exceptions necessitated by the exigencies of war. In the first instance, every operation, movement, or combat occasions damage to private property. Further, the right of an army to make use of and to requisition certain property is fully admitted (a). What is forbidden is such damage, destruction, improper seizure or taking of property as is not required in the interests of the army, and as would, therefore, increase the sufferings of the population in war.

408. Generally, therefore, no damage may be done that is not required by military operations, but even total destruction of property is justifiable if it is required by the exigencies of war.

Real
estate.

409. The real estate of individuals may not be appropriated or alienated, nor may it be used, let or hired for private or public profit (b).

410. The temporary use of real estate for the wants of the army is justified, even though such use may endanger its value. Thus, apart from the necessary use of land in war for marching, encampments, and construction of entrenchments, the inhabitants may be compelled to accommodate the troops and the sick and wounded in their houses, and army animals in their stables and sheds. Buildings may be used for the purposes of reconnaissance, cover, defence, etc., and if it is necessary, houses, fences and woods may be demolished, cut down, and removed to clear a field of fire or to provide material for bridges, fuel, etc., imperatively needed by the army.

Compensa-
tion.

411. Neither can rent be claimed for the use of property, nor compensation for damage caused by the necessities of war. If time allows, however, a note of the use or damage should be kept, or given to the inhabitant, so that in the event of funds being provided by either belligerent at the close of hostilities to compensate the inhabitants, there may be evidence to assist the assessors.

Billeting.

412. In quartering troops in private dwellings some rooms should be left to the inhabitants; the latter should not be driven into the streets without shelter. If for military reasons, whether for operation purposes or to protect men and horses from the weather, it is imperative to remove the inhabitants, endeavours should be made to give them notice and provide them with facilities for taking their indispensable baggage with them.

Unoccupied
buildings.

413. When buildings of absent owners are made use of, care should be taken that they are reasonably treated. The fact that the owners are away does not authorize pillage or damage (c). A note should be left if anything is taken. There is, however, no obligation to protect abandoned property, for to do so might require a very numerous body of men.

Destruction
by
way of
reprisal.

414. The custom of war permits as an act of reprisals the destruction of a house, by burning or otherwise, whose inmates, without possessing the rights of combatants (d), have fired on the troops.

(a) Hague Rules, 52 and 53.

(b) This prohibition includes the private property of ruling families so far as it has really this character and is not State domain.

(c) The opinion expressed by Bluntschli (*Völkerrecht*, s. 452, third edition, 1878), that "When the soldier finds the door of his billet locked and provisions intentionally spoilt or hidden, necessity compels him to burst open doors and search for food, and in righteous anger he may occasionally smash a mirror or two and stoke the fire with the furniture," is contrary to the Hague Rules, as such damage is not "imperatively demanded by the necessities of war"; it is not permitted in any disciplined army. (See A.A., 6 (1) (f).)

(d) See para. 462 *et seq.*

Care must, however, be taken to limit the destruction to the **Ch. XIV.**
property of the guilty.

415. For war purposes generally private personal property falls into two categories. The first category comprises all such things as are susceptible of direct military use. These may be seized, but they must be restored at the conclusion of peace, and indemnities must be paid for them (*a*). Under this category fall: appliances adopted for the transmission of news by land, sea, or air, such as cables (*b*), telegraph and telephone plant; all kinds of transport whether on land, at sea (*c*), or in the air, such as horses, motors, bicycles, carts, carriages, railways and railway plant (*d*), tramways, ships in port, river and canal craft, balloons, airships; depôts of arms, whether military or sporting (*e*); and in general all kinds of war material (*f*). No actual stipulation is made in the Hague Rules to oblige the belligerent who effects the seizure to give a receipt, but the fact of seizure should obviously be established in some way, if only to give the owner an opportunity of claiming the compensation expressly provided for (*g*).

Personal
property.
First
category.
Seizure.

416. The second category of private personal property covers all such articles as are not susceptible of direct military use, but are necessary for the maintenance of the army. Under this category fall such things as: food and fuel supplies, liquor and tobacco, cloth for uniforms, leather for boots, and the like. The taking of such articles is forbidden unless they are actually required for the needs of the army (*h*). They must be duly requisitioned, and the amount taken must be in proportion to the resources of the country (*i*).

Private
property.
Second
category.
Requisitioning.

(*a*) Hague Rules, 53.

(*b*) The following special rule with regard to cables in occupied territory is given in art. 54 of the Hague Rules:—"Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. They also must be restored at the conclusion of peace, and indemnities paid for them." It was, however, explained at the Hague Conference, 1907 (*Actes*, Vol. III, p. 15), that "this article is only to be taken to refer to what passes on land, without touching the question of the seizure or destruction of submarine cables in the open sea." This reservation detracts from its importance, since if the destruction or seizure of a cable were necessary, steps might be taken to cut it or work it at a point outside the three-mile limit. The rule applies to both government and private cables.

(*c*) Except in cases governed by maritime law; this law does not affect ships in port. See Hague Conference, 1907, *Actes*, Vol. III, p. 27, where the possibility of troops seizing ships in port and river craft is alluded to.

(*d*) At the close of the War, 1870-1, the Germans retained all railway rolling stock belonging to private companies, and a mixed commission was instituted which fixed the compensation to be divided between them. (Brenet, 186.) As regards railway material coming from the territory of neutral powers, see para. 501 *et seq.*

(*e*) Inhabitants may be called upon to give up any arms and ammunition in their possession, even antique, valuable, and curious weapons, if circumstances demand it.

(*f*) War material in its widest sense means anything that can be made use of for the purpose of offence and defence; it also includes the necessary means of transport.

(*g*) The British Requisitioning Instructions, para. 21, order that "no property is to be taken from non-combatants without a requisition receipt note being given in exchange."

(*h*) Hague Rules, 52.

(*i*) *ibid* Rules, 52.

The expression "needs of the army" was adopted deliberately at the First Hague Conference as having a more restricted meaning than the "necessities of the war" might be held to convey. Luxuries, such as wine and tobacco, which add to the comfort and efficiency of the army, may be requisitioned, but not such articles as watches and jewellery. "Occupied territory is not to be systematically exhausted." (Hague Conference, 1899, p. 149.) The quantity of food which should be left in possession of the inhabitants of a country when requisitions are made, would be decided by the highest authority. The usual practice under normal conditions is to leave three days' supply of food with a household, but at outlying farms or agricultural centres a week's supply for each individual and a fortnight's supply for each beast. (Requisitioning Instructions, note to para. 6.)

Ch. XIV. 417. Articles requisitioned should be paid for in ready money, but if this is not possible a receipt must be given for them, and the payment of the amount due must be made as soon as possible (a).

Payment
for requisitions.

Method of
requisitions.

418. Requisitions can only be demanded on the authority of the commander in the locality occupied (b), but it is not necessary that his order for the requisition should be produced, as the articles taken must be paid for or a receipt given. The assistance of the local authorities of the invaded territory may be invoked to obtain the supplies (c). When it is impossible to obtain this assistance special parties under an officer should be detailed to collect what is required. Except in cases of emergency no one under the rank of commissioned officer is, by the regulations of practically all armies, permitted to requisition (d).

419. Requisitions of supplies may be made in bulk, that is, a community may be called on to supply certain quantities, or a return may be called for from inhabitants giving the amounts in their possession of which a proportion may then be requisitioned, or the householders may be requisitioned to feed or partly feed the soldiers quartered on them, and any other way that is convenient may be employed provided the above-mentioned rules are observed.

Billeting.

420. The right to billet troops on the inhabitants follows the right to requisition.

Fixing of
prices.

421. The prices to be paid for requisitioned supplies may be fixed by the commander of the occupying force. The prices of commodities on sale may also be regulated, and limits may be placed on the hours and places of trading (e).

Destruction
of supplies.

422. Supplies in the hands of private inhabitants may not be destroyed simply for fear that the enemy should make use of them later on (f).

Contributions.

423. Cash, over and above taxes, may be requisitioned from the inhabitants, and is then called a "contribution." The occupant may not, however, levy a contribution for the purpose of enriching

(a) Hague Rules, 52.

The practice of war which prevailed before the agreement upon the above article by the civilized Powers was to defer payment until the end of the war, to make allowance for the value requisitioned in the indemnity agreed on in the terms of peace and to leave each side to settle with its own subjects. In the version of the Rules drawn up at the First Hague Conference of 1899, it was merely laid down that requisitions should "as far as possible be paid for in ready money," or a receipt should be given, and it was assumed that "the question of the payment of receipts will ordinarily form the subject of an article in the terms of peace." (Hague Conference, 1899, p. 151.) The Rules drawn up in 1907 have made the former practice and rule obsolete; if a cash settlement is not possible, payment of sums due on account of requisitions must be made as soon as possible, and "as far as possible during the hostilities." (Hague Conference, 1907, *Actes*, Vol. III, p. 26.) Under these Rules therefore a requisition receipt is an acknowledgment of a debt and a promise to pay. The system of cash payment for requisitions is recommended as often less irksome to the population and generally more politic, if only to prevent the people from concealing their supplies. The army of occupation can procure cash by means of contributions in money (see below, para. 423) which can be levied evenly upon the population, whereas when requisitions are made without payment they may bear heavily on chance individuals. (Hague Conference, 1899, p. 150.)

(b) Hague Rules, 52, and Hague Conference, 1899, p. 150.

(c) The British Requisitioning Instructions, para. 8, say:—"Requisitioning in a civilized country will generally be made through the agency of the local civil authorities by a demand on the form prescribed—A.F. 780."

(d) See Field Service Regulations, Part II, 1909, p. 62, and A.A. 6.

(e) See "Duties of a Japanese Civil Governor in the theatre of war" in the Russo-Japanese War. British Officers' Reports, Vol. II, p. 657 and note.

(f) Only in case of a general devastation may such supplies, like other property, be destroyed; see para. 424 below.

himself (a), and it can only be applied to the needs of the army or **Ch. XIV.** of the administration of the territory in question (b).

424. A contribution should not be exorbitant (c) and may no longer be used as a means of pressure or of punishment (d). It is chiefly useful to distribute the burden of requisition between towns and the supply-producing country districts, cash contributed in the former being used to purchase produce in the latter.

425. A contribution may not be collected except under a written order and on the responsibility of a commander-in-chief. The collection must be made as far as is possible on the basis of the assessment of taxes in force at the time (e), and a receipt must be given to every individual contributor (f).

(ii.) *Public Property.*

426. Real property belonging to the State which is of a military character, such as forts, arsenals, dockyards, magazines, barracks, and stores, also railways, canals, bridges, piers, and wharves, remain absolutely in the hands of the occupant until the end of the war. They may be damaged or destroyed in the interest of the military operations. Real property of a State.

427. Real property belonging to the State which is essentially of a civil or non-military character, such as public buildings and offices, land, forests, parks, farms, and mines, may not be damaged unless its destruction is imperatively demanded by the exigencies of war. The occupant becomes the administrator and usufructuary of the property, but he must not exercise his rights in such a wasteful or negligent way as will decrease its value, for he has not the absolute right of disposal or sale (g).

428. The occupant may, however, let or utilize public land and buildings, sell the crops on public land, cut and sell timber, work the mines; but he may not make a contract or lease extending beyond the conclusion of the war, and the cutting or mining must not exceed what is necessary or usual, and must not be an abusive exploitation.

429. Special exception, however, is made in favour of property belonging to local, that is to say, provincial, county, municipal and parochial authorities. This as well as the property of institutions dedicated to public worship, charity, education, science, and art, such as churches, chapels, synagogues, mosques, almshouses, hospitals, schools, museums, libraries, and the like, must be treated as private property (h). Troops, sick and wounded, horses, and stores may therefore be housed in buildings of the above character, but such use is only justifiable if it is a military necessity. Any seizure, destruction, or wilful damage to the property of such institutions, or to historic monuments, or works of science and art is forbidden (i). Thus, it would not be improper to place sick and Property of local governments.

(a) Hague Conference, 1899, p. 150. The original purpose of contributions as ransom in place of plundering and devastation has completely disappeared.

(b) Hague Rules, 49.

(c) The victor is not justified in covering the cost of the war, even when it has been forced on him, by raids on the capital of private individuals. (*Kriegsbrauch*, p. 63.)

(d) Hague Rules, 50, definitely forbids collective pecuniary punishment.

(e) Hague Rules, 51. For collection of taxes, see para. 371 above.

(f) Hague Rules, 51.

(g) Hague Rules, 55, which says such property must be administered "in accordance with the rules of usufruct"; that is, the occupant has the *usus* (= use) and the *fructus* (= products).

(h) Hague Rules, 56, para. 1.

(i) Hague Rules, 56, para. 2. See para. 436 below. As regards the arrangements for sparing such institutions during a bombardment, see para. 135 above.

Ch. XIV. wounded in a church if no accommodation could immediately be found elsewhere, but a consecrated building should not be used for the purpose of barracks, stables, or stores, unless it is absolutely necessary (a).

Movable property of a State.

430. Movable property belonging to the State is, like private property, divided, as regards its treatment, into two categories. Cash, specie, funds, and realizable securities which are strictly the property of the State (b), and all property directly susceptible of military use, such as means of transport, appliances for the communication of news, depôts of arms, stores and supplies (c), may be taken possession of as booty. The public income and taxes raised in occupied territory may also be disposed of, but in this case the regular expenditure of the administration must be borne by the occupant (d).

Other public property.

431. Other movable public property, not directly susceptible of military use, as well as that belonging to the institutions mentioned above which is to be treated as private property (e), must be respected and cannot be appropriated: for instance, crown jewels, pictures, collections of works of art, and archives, although papers in connection with the war may be seized even when forming part of archives.

Property whose ownership is doubtful.

432. Where there is any doubt whether certain property is public or private, as may frequently occur in the case of stores and supplies obtained from contractors, it should be considered to be public property unless and until its private character is distinctly proved (f).

(iii.) *Property on the Battlefield.*

Treatment of property found on the battlefield.

433. Property found or captured on a battlefield is dealt with generally in accordance with the rules given above. Private enemy property on the battlefield is not, as in former times, in every case booty. Horses, arms and ammunition and military papers are booty even if they are the property of individuals, but cash, jewellery, and other private articles of value are not (g). There is a definite obligation that personal effects, valuables, letters, etc., found on the field must be collected and forwarded, by means of the prisoners of war information bureau, to those concerned (h).

(iv.) *General Devastation.*

When permissible.

434. General devastation of enemy territory is, as a rule, absolutely prohibited, and only permitted very exceptionally, when "it is imperatively demanded by the necessities of war" (i). The question in what circumstances a necessity arises cannot be decided by any hard and fast rule (j).

(a) In 1870 the Germans housed 9,000 French prisoners in the Cathedral of Orleans. (Letters of Major von Kretschman, Latreille's French translation, p. 312.)

(b) Hague Rules, 53. Banks may be ordered not to part with funds and securities until the ownership is determined. Art. 53 excludes the seizure of funds belonging to a Government savings bank, or to private individuals or companies. The occupant would be liable for the deposits in Government savings banks of persons residing in the occupied territory. The Germans in France, 1870-1, long before the meeting of the First Hague Conference, recognized this liability. Depositors of 50 francs and less were paid in full, but those whose balances exceeded this amount received only a percentage. Loening, 1873, p. 117.

(c) Supplies "for war purposes." (*Kriegsbrauch*, 58.)

(d) Hague Rules, 48.

(e) See para. 429.

(f) Cases of Government property being transferred to private ownership to avoid seizure have occurred in various wars.

(g) Hague Rules, 4. See paras. 69-71.

(h) Hague Rules, 14. See paras. 102-107.

(i) Hague Rules, 23 (g).

(j) For instance in the case of a *levée en masse* on already occupied territory, when self-preservation compels a belligerent to resort to the most severe measures, a general devastation might be absolutely necessary.

X.—MEANS OF SECURING LEGITIMATE WARFARE.

(i.) *General.*

435. Scarcely any war has taken place without complaints having been made of illegitimate acts and omissions of some kind or other having been committed by individuals or by commanders. In some cases belligerent Governments themselves, owing to differences of interpretation of the laws of war, have been accused of illegitimate acts or of refusing to punish alleged illegitimate acts of their soldiers.

Alleged occurrence of illegitimate acts.

436. The Convention respecting the Laws and Customs of War on Land foresees the possibility of illegitimate acts and lays down that :—"A belligerent party which violates the provisions of the Rules (annexed to the Convention) (a), shall if the case demands be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces" (b). The Rules further order that the perpetrators of the particular offences of seizure, damage or wilful destruction of churches, hospitals, schools, museums, historic monuments, works of art, etc., shall be prosecuted (c).

437. As war is the last remedy of Governments for injuries, no means would appear to exist for enforcing reparation for violations of the laws of war. Practically, however, legitimate warfare is, on the whole at least, secured through several means recognized by International Law. Moreover, it is in the interest of a belligerent to prevent his opponent having any justifiable occasion for complaint, because no Power, and especially no Power engaged in a national war, can afford to be wholly regardless of the public opinion of the world.

How legitimate war is on the whole secured.

438. These means fall into two classes according to whether or no they fall under the category of self-help. To the one class belong : complaints lodged with the enemy ; complaints lodged with neutral States ; and good offices, mediation, and intervention of neutral States. To the other class belong : punishment of war crimes committed by enemy soldiers and other enemy subjects ; reprisals ; and the taking of hostages.

Two classes of means.

(ii.) *Complaints, Good Offices, Mediation and Intervention (d).*

439. As diplomatic intercourse between the contending States is broken off during war, complaints are either sent to the enemy under protection of a flag of truce (e), or through a neutral State which lends its good offices (f). Complaints may also be lodged with neutral States, with or without a view of soliciting their good offices, mediation, or intervention for the purpose of making the enemy observe the laws of war (g). And it may be incidentally remarked

Complaints.

(a) Referred to in this chapter as the Hague Rules.

(b) Art. 3 of the Convention respecting the Laws and Customs of War on Land.

(c) Hague Rules, 56.

(d) Although complaints lodged with neutral States, good offices, mediation and intervention are diplomatic means, they are of sufficient interest to soldiers to be briefly mentioned here.

(e) Thus, during the siege of Port Arthur, complaints with regard to hospitals in the fortress being struck by shells were made direct through a parlementaire to General Baron Nogi. (Ariga, p. 286.)

(f) Thus in October, 1904, during the Russo-Japanese War, Japan sent a complaint to the Russian Government, concerning the alleged use of Chinese clothing by Russian troops, through the intermediary of the United States of America. (Ariga, p. 253.)

(g) Thus in January, 1871, during the Franco-German War, Germany, in a circular letter addressed to her diplomatic envoys abroad to be communicated to the respective neutral Governments, complained of twenty-one cases in which it was alleged that the French had intentionally fired on the bearers of a flag of truce.

Ch. XIV. that occasionally the foreign press is made use of for enlisting foreign public opinion against the enemy.

Good offices and mediation. Intervention.

440. Good offices and mediation by neutral States for the purpose of settling differences are friendly acts, in contradistinction to intervention which is dictatorial interference for the purpose of making the respective belligerents comply with the laws of war.

(iii.) *The punishment of War Crimes.*

War crimes.

441. The term "War Crime" is the technical expression for such an act of enemy soldiers and enemy civilians as may be visited by punishment or capture of the offenders. It is usual to employ this term, but it must be emphasized that it is used in the technical military and legal sense only, and not in the moral sense. For although some of these acts, such as abuse of the privileges of the Red Cross badge, or the murder of prisoners, may be disgraceful, yet others, such as conveying information about the enemy, may be highly patriotic and praiseworthy. The enemy, however, is in any case entitled to punish these acts as war crimes.

442. War crimes may be divided into four different classes :—

- (i) Violations of the recognized rules of warfare by members of the armed forces.
- (ii) Illegitimate hostilities in arms committed by individuals who are not members of the armed forces.
- (iii) Espionage and war treason.
- (iv) Marauding.

Violations of laws of war by armed forces.

443. The more important violations are the following :—making use of poisoned and otherwise forbidden arms and ammunition ; killing of the wounded ; refusal of quarter ; treacherous request of quarter ; maltreatment of dead bodies on the battle-field ; ill-treatment of prisoners of war ; breaking of parole by prisoners of war ; firing on undefended localities ; abuse of the flag of truce ; firing on the flag of truce ; abuse of the Red Cross flag and badge, and other violations of the Geneva Convention ; use of civilian clothing by troops to conceal their military character during battle ; bombardment of hospitals and other privileged buildings ; improper use of privileged buildings for military purposes ; poisoning of wells and streams ; pillage and purposeless destruction ; ill-treatment of inhabitants in occupied territory. It is important, however, to note that members of the armed forces who commit such violations of the recognized rules of warfare as are ordered by their Government or by their commander are not war criminals and cannot therefore be punished by the enemy. He may punish the officials or commanders responsible for such orders if they fall into his hands, but otherwise he may only resort to the other means of obtaining redress which are dealt with in this chapter.

Hostilities in arms by individuals not belonging to the armed forces.

444. As regards illegitimate hostilities in arms on the part of private individuals, the conditions under which such private individuals may acquire the privileges of members of the armed forces have already been stated (a). If persons take up arms and commit hostilities without having satisfied these conditions, they are from the enemy's standpoint guilty of illegitimate acts, and, when captured, are liable to punishment as war criminals. If such acts are committed by the inhabitants of a territory invaded by the enemy, the term "war rebellion" is usually applied.

(a) See para. 23 *et seq.*

445. In reference to espionage and war treason, it has already **Ch. XIV.** been pointed out in dealing with Espionage (a), that in the Hague Rules the word "spy" has a technical meaning. The obtaining, supplying and carrying of information to the enemy is not espionage, unless the individual concerned is acting clandestinely and under false pretences; but it may be war treason. Thus, for instance, inhabitants of enemy territory occupied by a belligerent who give information to the enemy may be punished for war treason. Many other acts, however, which may be attempted or accomplished in occupied territory, or within the enemy's lines, by private individuals or by soldiers in disguise, are also classed as war treason, although perfectly legitimate if done by members of the armed forces. For instance, damage to railways, war material, telegraphs, or other means of communication, in the interest of the enemy; aid to enemy prisoners of war to escape; conspiracy against the armed forces or against members of them; intentionally misleading troops in the interest of the enemy, when acting as guide; voluntary assistance to the enemy to facilitate his operations, (for instance, by giving supplies and money, and acting as guides); inducing soldiers to serve as spies, to desert, or to surrender; bribing soldiers in the interests of the enemy; damage or alteration to military notices and signposts in the interests of the enemy; fouling water supply and concealing animals, vehicles, supplies, and fuel in the interests of the enemy; knowingly aiding the advance or retirement of the enemy; circulating proclamations in the interests of the enemy.

—
Espionage
and war
treason.

446. There are many acts likely to be committed by inhabitants which are not violations of the laws of war, and not therefore war crimes, but which, nevertheless, a belligerent may forbid and punish in the interests of order and the safety of his army, such as:— failure to extinguish or exhibit lights at fixed hours; failure to take out a pass; charging over regulation prices for accommodation; furnishing liquor to soldiers; evading censorship regulations; making false accusations against troops; making false claims for damage; being in possession of army animals, stores or supplies; neglect or disobedience generally of Government, police, and sanitary regulations.

Neglect
and dis-
obedience
of orders.

447. It is advisable that the inhabitants should be informed directly occupation has taken place of their duty to maintain order, to respect the commands of the occupant and, particularly, to desist from acts especially forbidden (b).

448. The fourth class of war criminals consists of marauders. These are individuals either civilians or soldiers who have left their corps (c), who follow armies on the march or appear on battle-fields, either singly or in bands, in quest of booty, and rob, maltreat, or murder stragglers and wounded, and pillage the dead. Their presence, besides being a menace and danger to the belligerent they accompany, may lead to aspersions on the conduct of his army by his adversary. Their acts are considered acts of illegitimate warfare, and the punishment takes place in the interest of either belligerent.

Marauding.

(a) See para. 180 *et seq.*

(b) Professor Ariga thinks that "it is contrary to all the principles of repressive measures not to make known in advance what acts are and are not punishable . . . It can also be said that the object of martial law is not so much to punish as to menace and thus prevent harmful acts. For this purpose publication is necessary." (Ariga, p. 378.) See also para. 347 and note.

(c) Soldiers of the national army who take to marauding are, of course, punishable under military law. (See A.A. 6 (1) (a).)

Ch. XIV.

Trial of
war
criminals.
Punish-
ments.

Punish-
ments.

449. Charges of war crimes may be dealt with by military courts or by such courts as the belligerent concerned may determine. In every case, however, there must be a trial before punishment (a), and the utmost care must be taken to confine the punishment to the actual offender.

450. All war crimes are liable to be punished by death, but a more lenient penalty may be pronounced. Corporal punishment is excluded and cruelty in any form must be avoided. The punishment should be deterrent, but great severity may defeat its own ends by driving the population to rebellion (b).

451. In pronouncing a sentence of imprisonment it need not be taken into consideration whether there is a probability of the prisoner being released at the end of the war. There is no right to claim release and it would not be in the interests of humanity to grant such right, for otherwise belligerents would be forced to carry out capital punishment in many more cases than is now usually necessary.

(iv.) *Reprisals* (c).

Nature of
reprisals.

452. Reprisals between belligerents are retaliation for illegitimate acts of warfare, for the purpose of making the enemy comply in future with the recognized laws of war. They are not referred to in the text of the Hague Rules, but are mentioned in the Report presented to the Peace Conference of 1899 by the Committee which drew up the Convention respecting the Laws and Customs of War on Land (d). They are by custom admissible as an indispensable means of securing legitimate warfare. The mere fact that they may be expected if violations of the laws of war are committed, acts to a great extent as a deterrent. They are not a means of punishment, or of arbitrary vengeance, but of coercion.

453. The illegitimate acts may be committed by a Government, by its military commanders, or by some person or persons whom it is obviously impossible to apprehend, try, and punish. Owing to the advance of civilization and the high state of discipline and training of modern armies, such acts have become more and more uncommon and are now rarely committed except by irregulars and inhabitants of invaded territory.

454. Reprisals are an extreme measure because in most cases they inflict suffering upon innocent individuals. In this, however, their coercive force exists, and they are indispensable as a last resource.

(a) "Previous trial is in every case indispensable." (Hague Conference, 1899, p. 146.)

(b) The language employed for the proceedings would usually be that of the occupant. An interpreter should, if possible, be provided in case a criminal does not understand the language of the occupant. It is advisable that, if possible, the proceedings should be public.

Professor Ariga gives the following particulars of the military courts which dealt with the offences of inhabitants in Manchuria:—

(1) A clear distinction was made between courts-martial and military courts; in the latter it was not considered necessary to have recourse to the slow and minute procedure of courts-martial.

(2) The court consisted of officers and military or civil officials, but never of less than three members. The verdict required a majority, but not unanimity.

(3) The accused was allowed counsel.

(4) The penalty of death was laid down for nearly all offences, but the court had full power to pronounce a less severe punishment or none at all.

(c) Reprisals in time of war only are referred to here.

(d) When dealing with art. 50, which forbids collective punishment, the report states that the article is "without prejudice of the question of reprisals." (Hague Conference, 1899, p. 151.)

455. Although there is no rule of International Law respecting the matter, reprisals should never be resorted to by the individual soldier, but only by order of a commander. Ch. XIV.

456. An infraction of the laws of war having been definitely established, every effort should first be made to detect and punish the actual offenders. Only if this is impossible should other measures be taken in case the injured belligerent thinks that the facts warrant them. As a rule the injured party would not at once resort to reprisals, but would first lodge a complaint with the enemy in the hope of stopping any repetition of the offence or of securing the punishment of the guilty. This course should always be pursued unless the safety of the troops requires immediate drastic action and the persons who actually committed the offences cannot be secured. Procedure with regard to alleged illegitimate acts.

457. Even when both direct and indirect appeal to the enemy for redress has failed it should be considered, before resorting to reprisals, whether he is not more likely to be influenced by a steady adherence to the laws of war on the part of his adversary.

458. Although collective punishment of the population is forbidden for the acts of individuals for which it cannot be regarded as collectively responsible (a), it may be necessary to resort to reprisals against a locality or community, for some act committed by its inhabitants, or members who cannot be identified. Collective punishment.

459. What kinds of acts should be resorted to as reprisals is for the consideration of the injured party. Acts done by way of reprisals must not, however, be excessive and must not exceed the degree of violation committed by the enemy (b). Form of reprisals.

(a) Hague Rules, 50.

(b) The following are historical examples of reprisals.

Early in 1813 "The British Government, having sent to England, to be tried for treason, 23 Irishmen, naturalized in the United States, who had been captured on vessels of the United States Congress authorized the President to retaliate. Under this Act, General Dearborn placed in close confinement 23 prisoners taken at Fort George. General Prevost, under the express direction of Lord Bathurst, ordered the close imprisonment of, double the number of commissioned and non-commissioned United States officers. This was followed by a 'threat of unmitigated severity against American citizens and villages,' in case the system of retaliation was pursued. Mr. Madison retaliated by putting into confinement a similar number of British officers taken by the United States. General Prevost immediately retaliated by subjecting to the same discipline all his prisoners, whatsoever. . . . A better temper, however, soon came over the British Government, by whom the system had been instituted. A party of United States' officers, who were prisoners of war in England, were released on parole, with instructions to state to the President that the 23 prisoners who had been charged with treason in England had not been tried, but remained on the usual basis of prisoners of war. This led to the dismissal on parole of all officers on both sides." (Wharton, "A digest of the International Law of the United States," (1886), Vol. III, para. 348 B.)

During the Franco-Prussian War, 1870-1, the French captured 40 merchant ships and made their crews prisoners of war. Count Bismarck, who considered it contrary to International Law to retain these men as prisoners, demanded their liberation, and when the French refused it, ordered by way of reprisals 40 French private individuals of local importance to be arrested and sent as prisoners of war to Bremen, where they were kept until the end of the war. (Count Bismarck as it happened was decidedly wrong, for France had, as the laws then stood, in no way committed an illegal act by retaining the German crews as prisoners of war.)

The Germans, in 1870-1, by way of reprisals for offences committed by inhabitants in taking part in the attack on troops, convoys, messengers, etc., exacted fines or burnt down buildings. At Charnes, the town casino was burnt down as punishment for inhabitants having fired on the escort of a convoy of prisoners of war (Von Widdern, IV, 2, p. 33). The village of Fontenay was burnt down and a fine of 10,000,000 francs levied on the Province of Lorraine on account of the railway bridge near the village having been destroyed with the alleged connivance of inhabitants. (Idem, IV, 2, pp. 290-303.)

In his proclamations of 31st May, 16th June and 19th June, 1900, Field-Marshal Lord Roberts threatened reprisals for wanton damage to property and damage to railway and telegraph lines by the burning of the houses and farms in the vicinity of the places where the damage was done.

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CH. XIV. 460. Reprisals may not be resorted to or must at once cease, when the enemy gives satisfaction for the illegitimate acts committed by him.

(v.) *The taking of Hostages.*

Former
uses of
hostages.

461. The practice of taking hostages as a means of securing legitimate warfare was in former times very common. To ensure the observance of treaties, armistices and other agreements depending on good faith, hostages were given or exchanged, whose lives were held responsible for any perfidy. This practice is now obsolete, and if hostages are nowadays taken at all they have to suffer captivity, and not death, in case the enemy violates the agreements in question. The Hague Rules do not mention hostages, and it must be emphasized that in modern times it is deemed preferable to resort to territorial guarantees instead of taking hostages (a).

Placing in-
habitants
on railway
trains.

462. Use has, in recent times (b), been made of hostages by placing prominent inhabitants on the engines of trains on the lines of communication in occupied territory for the purpose of ensuring the traffic from interruption by the native population.

463. Such measures expose the lives of innocent inhabitants not only to the illegitimate acts of train wrecking by private enemy individuals, but also to the lawful operations of raiding parties of the armed forces of the belligerent, and cannot therefore be considered a commendable practice.

Hostages
for
prisoners.

464. It would appear to be legitimate to take inhabitants as hostages for the proper treatment of wounded and sick when these are left behind in hostile localities. A similar course might become necessary if prisoners have fallen into the hands of irregular troops or of inhabitants who have risen in arms, since there might be fear of their maltreatment (c).

XI.—RIGHTS AND DUTIES OF NEUTRAL POWERS (d) AND PERSONS.

(i.) *General Principles.*

General
duties of
neutrality.

465. Neutrality imposes duties on neutrals as well as on belligerents. The duties of neutral States are: To abstain from participation in the conflict and from committing any act that favours or assists one of the belligerents in matters that affect the war, and to afford impartial treatment to all of them in permitting, granting, or refusing facilities in matters that do not directly concern operations. The duties of belligerents are: To respect

(a) On the surrender of Port Arthur, 1905, all the fortifications and forts on three hills and on the highlands and on the south-east of them were handed over to the Japanese Army "by way of guarantee" (art. 3, Takahashi, p. 212).

To ensure the fulfilment of the conditions of the preliminaries of peace signed at Versailles at the end of the war of 1870-1, the Germans continued to occupy a portion of eastern France, handing it back section by section as the payment of the indemnity was completed (art. 3 of the preliminary Treaty of Peace).

(b) In France, in 1870-1, by the Germans (see *Kriegsbrauch*, 50, where it was praised for its complete success, "whether due to the greater watchfulness of the parishes or to its influence on the population, the safety of traffic was restored").

A proclamation with a section authorizing a similar measure was issued by Field-Marshal Earl Roberts at Pretoria on 19th June, 1900; this section was, however, withdrawn eight days afterwards.

(c) In 1870-1 the Germans took hostages at Chatillon for 200 prisoners in the hands of Ricciotti Garibaldi, who had threatened to kill them, and at Remiremont for certain railway officials who had been carried off (Von Widdern, III, 61, and IV, 2, 41).

If necessary hostages may be taken to ensure compliance with requisitions, contributions, and the like, but this has nothing to do with illegitimate warfare. (See para. 371, last para. of second footnote.)

(d) A neutral Power is a State which is not taking part in the war.

the territory of neutral States and not to suppress their intercourse with the enemy. Neutrality can therefore be violated as well by a belligerent as by a neutral. Ch. XIV.

466. The application of these principles to the relations between belligerent and neutral States gives rise to many important questions not only of a military and naval, but of a political, commercial, and maritime nature. It is here, however, only necessary to consider the rights and duties of belligerents and neutrals in so far as they affect land warfare. The written law concerning this is contained in the "Convention respecting the Rights and Duties of Neutral Powers and Persons in War on Land" which was agreed upon at the Peace Conference of 1907 (a).

467. The consideration of the subject may be divided into the following headings: neutral territory and military operations; neutral territory and recruiting; neutral territory and supplies; neutral territory and the transmission of information; internment of belligerent forces in neutral territory: neutral territory and prisoners of war; neutral territory and sick and wounded; neutral persons and property; railway material of neutral Powers. Division of subject.

(ii.) *Neutral Territory and Military Operations.*

468. The territory of a neutral Power must not be violated by belligerents (b) and must not, therefore, be made a theatre of operations. Belligerents are expressly forbidden to move troops or convoys, whether of military stores or supplies, across it (c). Any attack on enemy forces which may have taken refuge on it is a violation of neutrality. Should, however, one belligerent violate neutral territory by marching troops across it and the neutral Power be unable or unwilling to resist the violation, the other belligerent may be justified in attacking the enemy there (d). Neutral territory may not be violated.

469. A neutral State need not permit troops belonging to the forces of the belligerents to take refuge on its territory. If, however, permission is given, it is the duty of the neutral State to intern such troops (e) and prevent them from taking any further part in the conflict (f). Internment of belligerent forces if they enter.

470. A neutral Power must not allow, and may even resist by force, any attempt to violate its neutrality. Such resistance cannot be regarded as a hostile act (g), for it is the duty of the neutral State. Duties of neutral Power whose territory is threatened.

(a) This Convention, though it was signed (with reserve of three articles, 16, 17, and 18) by the British delegates at the Hague, has not yet received the ratification of H.M. the King. Certain legislation which has not yet taken place is necessary before this act can be accomplished. The contents of the Convention, with the exception of the three articles above named, are, however, binding in case of war, as on the whole they merely record the customary law of war on the subject.

(b) Neutrality Convention, art. 1.

(c) Neutrality Convention, art. 2.

(d) The circumstances under which Manchuria and Korea became the theatre of war were peculiar and exceptional, arising out of the inability of China and Korea to free themselves from Russian occupation and influence. The very purpose of the war was the expulsion of the Russians from Manchuria and Korea.

(e) Neutrality Convention, art. 11. For details as regards internment see para. 485 below.

(f) The historic example of this is the internment in Switzerland of the whole of General Bourbaki's army, 85,000 men strong, with 10,000 horses, as soon as it had passed (in accordance with a Convention between the French general Clinchant and the Swiss general Herzog) the frontier near Pontarlier, January-February, 1871 (see para. 488 and note below). The individual officers and soldiers who entered Belgian territory after the battle of Sedan were likewise interned.

(g) Neutrality Convention, arts. 10 and 11, Hague Conference, 1907, *Actes*, Vol. I, p. 146. Thus, in 1806, the Danes made a cordon along the frontier near Lubeck, "with arms in their hands to make their neutrality respected." They fired on the French troops who were pursuing the Prussians. (Murat to Napoleon, 6th November, 1806, *Lettres et Documents pour servir à l'histoire de Joachim Murat*, Vol. IV, Despatches 2629.)

Ch. XIV. 471. It is quite usual, therefore, for a neutral Power, whose territory is adjacent to a theatre of war, to mobilize a portion of its forces in order to ensure the inviolability of its frontiers (*a*). It may in fact, become the duty of the neutral Power to do so in order that one belligerent may not have an advantage over the other through an unresisted use of neutral territory (*b*).

(iii.) *Neutral Territory and Recruiting.*

Organiza-
tion of
expeditions
in neutral
territory.

472. The recruiting, formation, and organization of hostile expeditions on neutral territory and the passage across its frontier of organized bodies of men intending to enlist, are prohibited. If any persons are found attempting to cross the frontier and if their number, attitude, continuous march, or other circumstances point to the existence of an organization which has hitherto escaped the notice of the authorities, the neutral State must be on its guard and do its best to prevent the formation of similar bodies in its territory. On the other hand, a neutral State is not in duty bound to prevent the passage across its frontier of such men intending to enlist as cross the frontier singly or in small unorganized parties (*c*).

473. The nationality of the persons who may attempt to cross the frontier for the purpose of enlisting is not material. This applies even to subjects of the belligerent States returning to their country to fulfil military duties (*d*).

Voluntary
aid
societies.

474. It is, however, no violation of neutrality to permit medical units organized by recognized and authorized voluntary aid societies to join one of the belligerents, provided that he is willing to accept their services and that he notifies the other belligerent (*e*).

Joining of
belligerents
by subject
of neutral
States.

475. The duty of neutrality does not compel neutral States to take measures to prevent their subjects from joining the military service of a belligerent. Several States, as for instance Great Britain and the United States, have nevertheless taken such measures by their municipal legislation (*f*): and others, like France and the Netherlands, without actually prohibiting their subjects from joining a belligerent, impose the penalty of loss of citizenship, or of civil rights, for so doing (*g*).

(*a*) As Belgium and Switzerland did in 1870-1.

(*b*) In December, 1870, Germany complained to the Grand Duchy of Luxemburg that no measures had been taken to prevent the violation of its neutrality, and that numerous French soldiers had passed through its territory. Luxemburg, however, was able to meet the complaint by pointing out that by the Treaty of London, 1867, she was prevented from maintaining an army.

(*c*) Neutrality Convention, arts. 4, 5, paras. 2, and 6, and Hague Conference, 1907, *Actes*, III, p. 54. Even though several persons cross the frontier together, they must be held to be acting *isolement* (art. 6), so long as they do not obviously form part of an organized body recognizable as such. (Hague Conference, 1907, *Actes*, Vol. III, p. 55.)

(*d*) Hague Conference 1907, *Actes*, Vol. III, p. 55. Thus, in 1870, Switzerland raised no objection to Frenchmen travelling through Geneva or Germans through Basle for the purpose of reaching their corps, on condition that they travelled without arms and not in uniform; but an office organized in Basle for the purpose of sending bodies of Alsatian volunteers through Switzerland to the south of France was rightly prohibited. The United States raised no objection in August, 1870, to the departure from New York on British ships of a number of German subjects resident in the Republic who had been recalled to the reserve, although the recalling was carried out through the instrumentality of the German consuls.

(*e*) Geneva Convention, Article 11. See para. 193 above.

(*f*) See s. 4 of the Foreign Enlistment Act, 1870. The penalty is fine and imprisonment, with or without hard labour.

(*g*) When war occurs neutral Powers usually issue so-called "proclamations of neutrality," in which they state their full determination to observe the duties of neutrality and warn their subjects of the penalties they incur by joining or assisting the belligerents. For the British proclamation at the commencement of the Russo-Japanese War, in which the Foreign Enlistment Act was recited at length, see the *London Gazette* of 11th February, 1904.

476. It is the duty of neutral Powers to restrain their military and naval officers on the active list, with the exception of medical officers, from joining a belligerent, and to recall any such officers as have been lent to the belligerents before the outbreak of war (a). Ch. XIV.

(iv.) *Neutral Territory and Supplies.*

477. It has already been stated that belligerent Powers are forbidden to move convoys of warlike stores and supplies across the territory of a neutral State (b). It is not forbidden, however, to obtain arms, ammunition, and stores from subjects of neutral States through the usual commercial channels. Nor is a neutral Power bound to prevent such supply to belligerents on the part of companies and private individuals, of whatever nationality, settled on its territory, or stop the export or transit of warlike stores or of anything that could be of use to an army or fleet (c). Purchase of arms and supplies.

478. A neutral State is not bound to prevent its subjects from making loans to belligerents for the purpose of enabling them to continue the war (d). Loans.

479. The duty of neutrality, however, forbids neutral Powers themselves to supply or to present funds or material to a belligerent. Duty of neutral Powers.

480. A neutral Power is at liberty to forbid or restrict the commercial dealings of its subjects and persons resident in its territory with belligerents, but if it does so it must apply the prohibition or restriction impartially to both belligerents (e). Restrictions must be impartial.

(v.) *Neutral Territory and the Transmission of Information.*

481. Neutrality is not violated by a belligerent using, and the neutral Power permitting the use in its territory of, the postal and telegraph (including wireless) and telephone services open to the public. It is immaterial whether such services are operated by and belong to the neutral State, companies, or private individuals (f). This does not imply the right of using them, or permitting them to be used, in such a way as obviously to render assistance to one of the belligerents (g). Use of posts and telegraphs.

482. Although a neutral State must prevent the establishment by a belligerent of an official bureau for intelligence purposes on its territory, it need not prevent the supplying of information by private individuals resident there. Intelligence agents.

483. A neutral Power, however, is at liberty to forbid or restrict the use on behalf of belligerents of all the facilities that have been mentioned. In any case it must apply the prohibition or restriction impartially to both belligerents. Should the telegraph and the Restriction must be impartial.

(a) Thus, in 1899, Germany, as soon as it was brought to notice, ordered back and punished Major Reitzenstein and other officers on the active list who had joined the forces of the South African Republic. On the other hand, in 1876, Russia permitted officers in large numbers to enter the Serbian Army during the war against Turkey, but she withdrew her officers in Bulgarian service on the outbreak of the war with Serbia in 1887.

(b) Para. 468, footnote, above.

(c) Neutrality Convention, art. 7, and Hague Conference, 1907, *Actes*, Vol. I, pp. 141, 138.

(d) Neutrality Convention, art. 18 (a). In 1904, during the Russo-Japanese War, Japanese loans were floated in London and Berlin and Russian loans in Paris and Berlin.

(e) Neutrality Convention, art. 9. In 1870, in order to avoid controversy, Belgium and Switzerland by their municipal laws prohibited their nationals from supplying the belligerents. The British Foreign Enlistment Act forbids the supply of ships and naval equipment and armaments to a belligerent.

(f) Neutrality Convention, art. 8, postal services are not mentioned, but are obviously not excluded, as the more expeditious means are permitted.

(g) Hague Conference, 1907, *Actes*, Vol. III, p. 56. For instance, by keeping the offices open at abnormal hours and giving a belligerent's messages priority.

Ch. XIV. other services not be owned by the State, the neutral Power is specially bound to see that impartiality is observed by the company or private owners concerned (a).

Installation of telegraph and other apparatus after outbreak of hostilities.

484. Although belligerents may thus be permitted the benefit of services "opened to the use of the public" (b), they are expressly forbidden to instal after the outbreak of war, and a neutral State must prevent them from installing on its territory any wireless telegraphy station or any apparatus for the purpose of communicating. A neutral State must also prevent belligerents from using a station or apparatus already established in time of peace on its territory, if such station or apparatus is exclusively for military purposes, and was not previously open to the public (c).

(vi.) *The Internment of Belligerent Forces in Neutral Territory.*

Duty of internment.

485. Neutral territory being inviolable affords sanctuary to members of the armed forces and to the war material of belligerents, and to private citizens of the belligerent and their property. It is not a violation of neutrality to receive them and, if they are pursued, to compel the other party to stand fast on the frontier. A neutral Power, however, which receives belligerent troops on its territory, must intern them for the rest of the war, as far as possible at a distance from the theatre of operations (d); they are not permitted to rest, refresh, and re-equip themselves, and return to the conflict.

Conditions of internment.

486. The neutral Power which allows individual soldiers or bodies of troops to take refuge on its territory has the indisputable right to lay down the conditions upon which they may enter. In the case of large bodies of troops it is usual for the commander and a representative of the neutral Power to draw up a Convention in which the exact conditions are fixed and recorded (e). The first condition will naturally be that they shall give up their arms.

Position of interned troops.

487. Practically the interned troops are in many respects in the position of prisoners of war, and the rules concerning prisoners of war apply to them in a general way (f). They may be kept in camps, or even confined in fortresses or in places assigned for the purpose (g) and under such guard as is necessary in order to secure that they take no further part in the war. Even if no special Convention has been made, the neutral Power must supply them

(a) Neutrality Convention, arts. 7, 8, and 9.

(b) This expression has been borrowed from the Wireless Telegraph Convention of 1906, and is intended to serve as a convenient test of the commercial and non-military character of an installation. (Hague Conference, 1907, *Actes*, Vol. I, p. 139.)

(c) Neutrality Convention, art. 3.

(d) Neutrality Convention, art. 11. It may be noted here that according to the Convention for the Adaptation of the Principles of the Geneva Convention to Maritime Warfare, 1907 (which has not yet been ratified by H.M. the King), sick, wounded, and shipwrecked soldiers, if taken on board a neutral man-of-war, are in the same position as if no neutral territory. But if they are on a hospital ship or a private neutral vessel they must be given up on demand of the other belligerent. Once landed at a neutral port, however, they can no longer be claimed. (Arts. 11-15.)

(e) Thus on 1st February, 1871, General Clinchant, who had succeeded to the command of General Bourbaki's army when that commander had shot himself, concluded a Convention with the Swiss General Herzog. By this the French Army, pursued by General Manteuffel, was permitted to enter Switzerland on condition of giving up its artillery, arms, equipment, and ammunition, which were to be restored to France after peace, and on payment of the expenses incurred by Switzerland. Supply and transport wagons were permitted to return to France empty, while the post and treasury wagons, as well as the military chests, were handed over to the Confederation on the same terms as the arms and equipment. The text of the Convention is given in Appendix 20 to this chapter.

(f) See para. 54 *et seq.*, and 11 of the Hague Rules specially refers to the duty of neutrals to institute a prisoners of war information bureau when necessary.

(g) Neutrality Convention, art. 11, para. 2.

with proper food, clothing, and assistance in sickness, recovering the cost at the conclusion of peace (a). Ch. XIV.

488. The neutral Power may allow the interned officers, but not the non-commissioned officers and men, their liberty on their giving their parole not to leave the neutral territory without permission (b). No conditions, however, are laid down under which such permission is to be given, and no penalties are mentioned if the parole be broken. The granting of leave to an interned officer to return to his own country, even temporarily only, for any reason, is not mentioned either, and may therefore be considered a very exceptional measure. A neutral State desirous of according such permission would be well advised in the first instance to obtain the consent of the other belligerent (c). Parole.

489. Members of the medical personnel serving with troops which cross into neutral territory can claim to be sent back to their army or their country as soon as their assistance is no longer indispensable for the care of the sick and wounded (d). Medical personnel.

(vii.) Prisoners of War in Neutral Territory.

490. Prisoners of war who succeed in escaping into neutral territory regain their liberty, but they cannot claim to remain there. It rests with the neutral State whether it will grant or refuse them admission, and in the latter case whether or not it will allow them to remain on its territory. If they are permitted to remain, the neutral State may compel them to make their residence in a specified locality (e). Prisoners who take refuge in neutral territory.

491. Prisoners of war brought into neutral territory by troops which take refuge there regain their liberty, but they must be treated by the neutral Power in the same way as prisoners of war who have escaped (f). Prisoners brought into neutral territory.

492. On the other hand, captured war material found in possession of troops which take refuge in neutral territory is treated as the property of their army (g) its origin being ignored. Captured war material.

(viii.) Neutral Territory and the Sick and Wounded.

493. A neutral Power may permit the passage of sick and wounded of belligerent armies through its territory without failing in its duties of neutrality (h). Passage of sick and wounded.

494. There is no obligation on the part of the neutral Power to permit the passage, but if the privilege is accorded at all it must be given to both belligerents impartially (i).

495. It is obvious that in facilitating the evacuation of sick and wounded a neutral Power can render valuable indirect assistance to a belligerent. It was, however, officially explained at the Peace Considerations of humanity.

(a) Neutrality Convention, art. 12.

(b) Neutrality Convention, art. 11, para. 3.

(c) Hague Conference, 1907, *Actes*, Vol. I, p. 147. As regards parole generally, see para. 98 above.

(d) This follows indirectly from Geneva Convention, art. 12, para. 2, for if the medical personnel can claim this from the enemy, they must certainly be allowed to claim it from a neutral. See also para. 501 below.

(e) Neutrality Convention, art. 13, para. 1, and Hague Conference, 1907, *Actes*, Vol. I, pp. 143, 144.

(f) Neutrality Convention, art. 13, para. 2.

(g) Hague Conference, 1907, *Actes*, Vol. I, p. 145.

(h) Neutrality Convention, art. 14. It will be observed that "sur son territoire" is rendered in the translation as "into its territory." Art. 14 was originally art. 50 of the Convention respecting the Laws and Customs of War on Land drawn up at the Hague in 1899, and the official translation of the same phrase in that Convention is "through its territory." This appears to give the sense better, for "into" might appear to preclude any idea of the sick and wounded leaving the territory.

(i) Hague Conference, 1899, p. 153.

Ch. XIV. Conference in 1899 that the article concerned had no other meaning than "to establish that considerations of humanity and hygiene might determine a neutral State to permit sick and wounded soldiers to cross its territory without failing in its duties of neutrality" (a).

Consent of other belligerents.

496. It does not appear to be necessary to obtain the consent of the other belligerent. If, however, the passage of any considerable body of sick and wounded is contemplated, it would be advisable to inform him before according the permission (b).

Differentiation according to status of the sick and wounded.

497. If the sick and wounded belong to the army of the belligerent who is transporting them through the neutral State, they may be allowed to go through to their own country (c).

498. If instead of simply transporting them through neutral territory the belligerent concerned hands them over to the neutral Power, they must be detained by this Power so as to prevent their taking further part in the military operations.

499. Sick and wounded prisoners of war belonging to the adverse party who are brought into neutral territory by a belligerent may not be carried through to his territory, nor may they be liberated like prisoners of war brought into neutral territory by belligerent troops taking refuge there. They must be detained by the neutral State in the same way as sick and wounded of the other party who are left in its territory (d).

Limitations as regards accompanying personnel, etc.

500. If a neutral Power permits the passage of sick and wounded through its territory, it must make a condition that no combatants nor war material accompany them. It must, further, take such measures as may be necessary to ensure that this condition is carried out (e). This condition, however, does not exclude such personnel and material as are required for the care of the sick and wounded (f).

Medical personnel.

501. The provisions of the Geneva Convention apply to sick and wounded who are interned in neutral territory (g). The position of the medical personnel with them is regulated by the conditions under which it was admitted. Failing a special agreement a neutral State would be justified in detaining a sufficient number of the medical personnel to take care of the sick and wounded. If, however, a sufficient number is not available it is the duty of the neutral State to supply the necessary medical attendance and hospital accommodation; the expenses must be refunded after the war by the belligerent concerned (h).

(ix.) *Neutral Persons.*

Neutral persons in occupied territory.

502. Neutral persons resident in occupied territory (i) acquire thereby, in a sense, the character of enemy persons and are on the

(a) Hague Conference, 1899, p. 153.

(b) The French Manual, p. 82, says:—"Neutral States abstain from authorizing the transit of convoys of sick and wounded until the consent of the belligerents has been obtained."

After the battle of Sedan, the German General Staff wished to send railway trains conveying wounded to Germany through Belgium and Luxembourg; the French Minister of War, however, protested, as he rightly argued that this would free lines to bring up men and ammunition. Belgium, after consulting the British Government, came to the conclusion that, if one of the belligerents objected, the giving of permission would be a breach of neutrality and therefore refused it. Luxembourg allowed it.

(c) Neutrality Convention, art. 14, para. 2, and Hague Conference, 1899, pp. 152-3.

(d) Neutrality Convention, art. 14, para. 2.

(e) Neutrality Convention, art. 14, para. 1.

(f) Hague Conference, 1899, 2nd committee, 2nd sub-committee, sixth meeting.

(g) Neutrality Convention, art. 15. See paras. 485-489.

(h) Neutrality Convention, art. 12.

(i) As regards neutral persons who are transitory, see para. 505 below.

As regards neutrals resident in British territory "we will treat them on a footing of equality with our own countrymen." British Declaration at the Hague Conference, 1907. *Actes*, Vol. III, p. 43.

whole not entitled to claim treatment different from that accorded to the other inhabitants. It may be politic, however, to give them more favourable treatment. They on their part should maintain an absolute reserve as regards the war. Oh. XIV.

503. Special instructions will usually be issued with regard to diplomatic agents and their correspondence; they must in any case be allowed to withdraw unmolested from occupied territory (a). Diplomatic agents.

504. Consuls are not diplomatic agents and cannot therefore claim any privileges due to the latter (b). Failing special instructions, they should be treated with such consideration as is due to them in consequence of their position at the head of the subjects of the neutral Power who are resident in the locality concerned. Consuls.

505. Subjects of neutral powers not resident but only on a transitory visit within occupied territory can, to a certain extent, claim different treatment from that accorded to inhabitants, provided they take no part in the war. For instance, they are as a rule exempt from requisitions and contributions, and, if their property is required for military ends and needs, they must be fully indemnified (c). Transitory visitors.

506. Subjects of neutral Powers, whether resident or only on a visit in occupied territory, may be punished for offences in the same manner as enemy subjects. They may be expelled or deported for just cause, but residents ought not to be expelled or deported without a special order of the Government or commander-in-chief of the occupying army (d). Such residents may under the same conditions as other inhabitants be taken into captivity. Punishments.

(x.) *Neutral Railway Material.*

507. Railway material originating from neutral territory, whether it be the property of the neutral Government, companies, or private persons, provided it is recognizable as belonging to them, must not be requisitioned or utilized except in so far as it is absolutely necessary. It must be sent back to the country of origin as soon as possible (e). Special treatment.

508. If railway material is thus detained, the neutral Power may, likewise in case of necessity, keep and utilize a corresponding amount of material originating from the territory of the belligerent Power (f). Power to detain equivalent.

509. The retention of this material by the neutral Power must not assume the character of retaliation. The right must be exercised only in case of necessity, up to the due amount, and with strict impartiality between the two belligerents. No retaliation.

(a) It is not settled whether a neutral diplomatic agent can claim to send messengers with sealed despatches through the lines of the occupant. When in 1870, during the siege of Paris, Mr. Washburne, the American envoy, raised this claim, the Germans refused to acknowledge it. (Washburne, p. 193.) For Count Bismarck's reply, see para. 132, note.

(b) Consuls in non-Christian States, Japan excepted, can claim the same privileges as diplomatic envoys.

(c) An interesting case of this nature happened during the Franco-Prussian War, in December, 1870. The Germans seized some British colliers lying in the Seine near Rouen and sank them for the purpose of preventing French gunboats from ascending the river. The owners were indemnified on the intervention of the British Government, although Count Bismarck maintained that there was no legal duty to do so. Rolling stock, the property of foreign railways, which may be in a theatre of war, is dealt with below in para. 507, *et seq.*

(d) In such cases, if military exigencies permit, they should be given reasonable time to adjust or hand over their private affairs.

(e) Neutrality Convention, art. 19.

(f) Hague Conference, 1907. *Actes*, Vol. I, p. 58.

Ch. XIV. 510. Compensation must be paid on either side according to the amount of material retained and the length of time it was retained (a).

APPENDIX 1.

INTERNATIONAL DECLARATION RENOUNCING THE USE, IN TIME OF WAR OF EXPLOSIVE PROJECTILES UNDER 400 GRAMMES WEIGHT.

*Signed at St. Petersburg, November 29, 1868.
December 11,*

(Translation (b).)

Déclaration.

SUR la proposition du Cabinet Impérial de Russie, une Commission Militaire Internationale ayant été réunie à St. Pétersbourg, afin d'examiner la convenance d'interdire l'usage de certains projectiles en temps de guerres entre les nations civilisées, et cette Commission ayant fixé d'un commun accord les limites techniques où les nécessités de la guerre doivent s'arrêter devant les exigences de l'humanité, les Soussignés sont autorisés par les ordres de leurs Gouvernements à déclarer ce qui suit :

Considérant que les progrès de la civilisation doivent avoir pour effet d'atténuer autant que possible les calamités de la guerre ;

Que le seul but légitime que les Etats doivent se proposer durant la guerre est l'affaiblissement des forces militaires de l'ennemi ;

Qu'à cet effet, il suffit de mettre hors de combat le plus grand nombre d'hommes possible ;

Que ce but serait dépassé par l'emploi d'armes qui aggraveraient inutilement les souffrances des hommes mis hors de combat, ou rendraient leur mort inévitable ;

Que l'emploi de pareilles armes serait dès lors contraire aux lois de l'humanité ;

Les Parties Contractantes s'engagent à renoncer mutuellement, en cas de guerre entre elles, à l'emploi par leurs troupes de terre ou de mer, de tout projectile d'un poids inférieur à 400 grammes qui serait ou explosible ou chargé de matières fulminantes ou inflammables.

Elles inviteront tous les Etats qui n'ont pas participé par l'envoi de Délégués aux délibérations de la Commission Militaire Internationale réunie à St. Pétersbourg à accéder au présent engagement.

Cet engagement n'est obligatoire que pour les Parties Contractantes ou

Declaration.

On the proposition of the Imperial Cabinet of Russia, an International Military Commission having assembled at St. Petersburg in order to examine into the expediency of forbidding the use of certain projectiles in times of war between civilized nations, and that Commission, having by common agreement fixed the technical limits at which the necessities of war ought to yield to the requirements of humanity, the Undersigned are authorized by the orders of their Governments to declare as follows :—

Considering that the progress of civilization should have the effect of alleviating as much as possible the calamities of war ;

That the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy ;

That for this purpose it is sufficient to disable the greatest possible number of men ;

That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable ;

That the employment of such arms would, therefore, be contrary to the laws of humanity ;

The Contracting Parties engage mutually to renounce, in case of war among themselves, the employment by their military or naval troops of any projectile of a weight below 400 grammes, which is either explosive or charged with fulminating or inflammable substances.

They will invite all the States which have not taken part in the deliberations of the International Military Commission assembled at St. Petersburg, by sending Delegates thereto, to accede to the present engagement.

This engagement is obligatory only upon the Contracting or Acceding

(a) Neutrality Convention, art. 19, para. 3.

(b) This translation, as well as those of the Declarations and Conventions which follow, was issued officially.

Accédantes en cas de guerre entre deux ou plusieurs d'entre elles : il n'est pas applicable vis-à-vis de Parties non-Contractantes ou qui n'auraient pas accédé.

Il cesserait également d'être obligatoire du moment où, dans une guerre entre Parties Contractantes ou Accédantes, une partie non-Contractante ou qui n'aurait pas accédé se joindrait à l'un des belligérants.

Les Parties Contractantes ou Accédantes se réservent de s'entendre ultérieurement toutes les fois qu'une proposition précise serait formulée en vue des perfectionnements à venir que la science pourrait apporter dans l'armement des troupes, afin de maintenir les principes qu'elles ont posés et de concilier les nécessités de la guerre avec les lois de l'humanité.

Fait à St. Pétersbourg, le vingt-neuf
onze Novembre
Décembre mil huit cent soixante-huit.

Here follow the signatures of the plenipotentiaries of :—

Great Britain.
Austria-Hungary.
Bavaria.
Belgium.
Denmark.
France.
Greece.
Italy.
Netherlands.
Persia.

Brazil acceded in 1869.

Parties thereto, in case of war between two or more of themselves: it is not applicable with regard to non-Contracting Parties, or Parties who shall not have acceded to it. Ch. XIV.

It will also cease to be obligatory from the moment when, in a war between Contracting or Acceding Parties, a non-Contracting Party or a non-Acceding Party shall join one of the belligerents.

The Contracting or Acceding Parties reserve to themselves to come hereafter to an understanding whenever a precise proposition shall be drawn up in view of future improvements which science may effect in the armament of troops, in order to maintain the principles which they have established, and to conciliate the necessities of war with the laws of humanity.

Done at St. Petersburg, the
twenty-ninth of November, one thou-
sand eight hundred and sixty-eight.

Portugal.
Prussia and North German Confederation.
Russia.
Sweden and Norway.
Switzerland.
Turkey.
Württemberg.

APPENDIX 2.

INTERNATIONAL DECLARATION RESPECTING EXPANDING BULLETS.

Signed at The Hague 29th July, 1899.

(Translation.)

Déclaration.

LES Soussignés, Plénipotentiaires des Puissances représentées à la Conférence Internationale de la Paix à La Haye, dûment autorisés à cet effet par leurs Gouvernements, s'inspirant des sentiments qui ont trouvé leur expression dans la Déclaration de Saint-Petersbourg du 29 Novembre (11 Décembre), 1868.

Déclarent ;

Les Puissances Contractantes s'interdisent l'emploi de balles qui s'épanouissent ou s'aplatissent facilement dans le corps humain, telles que les balles à enveloppe dure dont l'enveloppe ne couvrirait pas entièrement le noyau ou serait pourvue d'incisions.

Declaration.

THE Undersigned, Plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorized to that effect by their Governments, inspired by the sentiments which found expression in the Declaration of St. Petersburg of the 29th November (11th December), 1868,

Declare that :

The Contracting Parties agree to abstain from the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core, or is pierced with incisions.

Ch. XIV. La présente Déclaration n'est obligatoire que pour les Puissances Contractantes, en cas de guerre entre deux ou plusieurs d'entre elles.

Elle cessera d'être obligatoire du moment où dans une guerre entre des Puissances Contractantes, une Puissance non-Contractante se joindrait à l'un des belligérants.

La présente Déclaration sera ratifiée dans le plus bref délai possible.

Les ratifications seront déposées à La Haye.

Il sera dressé du dépôt de chaque ratification un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances Contractantes.

Les Puissances non-Signataires pourront adhérer à la présente Déclaration. Elles auront, à cet effet, à faire connaître leur adhésion aux Puissances Contractantes, au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et communiquée par celui-ci à toutes les autres Puissances Contractantes.

S'il arrivait qu'une des Hautes Parties Contractantes dénonçât la présente Déclaration, cette dénonciation ne produirait ses effets qu'un an après la notification faite par écrit au Gouvernement des Pays-Bas et communiquée immédiatement par celui-ci à toutes les autres Puissances Contractantes.

Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi, les Plénipotentiaires ont signé la présente Déclaration et l'ont revêtue de leurs cachets.

Fait à La Haye, le 29 Juillet, 1899, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances Contractantes.

Here follow the signatures of the plenipotentiaries of :—

Belgium.
Denmark.
Spain.
Mexico.
France.
Greece.
Montenegro.
Netherlands.

Persia.
Rumania.
Russia.
Siam.
Sweden and Norway.
Turkey.
Bulgaria.

The following States subsequently acceded :

Great Britain.
Austria-Hungary.
China.
Germany.
Italy.
Nicaragua.

Portugal.
Japan.
Luxemburg.
Servia.
Switzerland.

The present Declaration is only binding for the Contracting Powers in the case of a war between two or more of them.

It shall cease to be binding from the time when, in a war between the Contracting Powers, one of the belligerents is joined by a non-Contracting Power.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up on the receipt of each ratification, a copy of which, duly certified, shall be sent through the diplomatic channel to all the Contracting Powers.

The non-Signatory Powers may adhere to the present Declaration. For this purpose they must make their adhesion known to the Contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other Contracting Powers.

In the event of one of the High Contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and forthwith communicated by it to all the other Contracting Powers.

This denunciation shall only affect the notifying Power.

In faith of which the Plenipotentiaries have signed the present Declaration, and have affixed their seals thereto.

Done at The Hague the 29th July, 1899, in a single copy, which shall be kept in the archives of the Netherland Government, and of which copies, duly certified, shall be sent through the diplomatic channel to the Contracting Powers.

APPENDIX 3.

INTERNATIONAL DECLARATION RESPECTING ASPHYXIATING GASES.

Signed at The Hague, 29th July, 1899.

(Translation.)

Déclaration.

LES Soussignés, Plénipotentiaires des Puissances représentées à la Conférence Internationale de la Paix à La Haye, dûment autorisés à cet effet par leurs Gouvernements, s'inspirant des sentiments qui ont trouvé leur expression dans la Déclaration de Saint-Petersbourg du 29 Novembre (11 Décembre), 1868,

Déclarent :

Les Puissances Contractantes s'interdisent l'emploi de projectiles qui ont pour but unique (a) de répandre des gaz asphyxiants ou délétères.

La présente Déclaration n'est obligatoire que pour les Puissances Contractantes, en cas de guerre entre deux ou plusieurs d'entre elles.

Elle cessera d'être obligatoire du moment où dans une guerre entre des Puissances Contractantes, une Puissance non-Contractante se joindrait à l'un des belligérants.

La présente Déclaration sera ratifiée dans le plus bref délai possible.

Les ratifications seront déposées à La Haye.

Il sera dressé du dépôt de chaque ratification un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances Contractantes.

Les Puissances non-Signataires pourront adhérer à la présente Déclaration. Elles auront, à cet effet, à faire connaître leur adhésion aux Puissances Contractantes, au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et communiquée par celui-ci à toutes les autres Puissances Contractantes.

S'il arrivait qu'une des Hautes Parties Contractantes dénonçât la présente Déclaration, cette dénonciation ne produirait ses effets qu'un an après la notification faite par écrit au

Declaration.

THE Undersigned, Plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorized to that effect by their Governments, inspired by the sentiments which found expression in the Declaration of St. Petersburg of the 29th November (11th December), 1868,

Declare that :

The Contracting Powers agree to abstain from the use of projectiles the object (a) of which is the diffusion of asphyxiating or deleterious gases.

The present Declaration is only binding on the Contracting Powers in the case of a war between two or more of them.

It shall cease to be binding from the time when, in a war between the Contracting Powers, one of the belligerents shall be joined by a non-Contracting Power.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up on the receipt of each ratification, a copy of which, duly certified, shall be sent through the diplomatic channel to all the Contracting Powers.

The non-Signatory Powers can adhere to the present Declaration. For this purpose they must make their adhesion known to the Contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other Contracting Powers.

In the event of one of the High Contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the

(a) The word *unique* has been overlooked in the translation, which should read "the sole object of which" and not "the object of which."

Ch. XIV. Gouvernement des Pays-Bas et communiquée immédiatement par celui-ci à toutes les autres Puissances Contractantes.

Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi, les Plénipotentiaires ont signé la présente Déclaration et l'ont revêtue de leurs cachets.

Fait à La Haye, le 29 juillet, 1899, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances Contractantes.

Government of the Netherlands, and forthwith communicated by it to all the other Contracting Powers.

This denunciation shall only affect the notifying Power.

In faith of which the Plenipotentiaries have signed the present Declaration, and affixed their seals thereto.

Done at The Hague, the 29th July, 1899, in a single copy, which shall be kept in the archives of the Netherland Government, and copies of which, duly certified, shall be sent by the diplomatic channel to the Contracting Powers.

Here follow the signatures of the plenipotentiaries of:—

Belgium.
Denmark.
Spain.
Mexico.
France.
Greece.
Montenegro.
Netherlands.

Persia.
Portugal.
Rumania.
Russia.
Siam.
Sweden and Norway.
Turkey.
Bulgaria.

The following States subsequently acceded:

Great Britain.
Austria-Hungary.
China.
Germany.
Italy.

Japan.
Luxemburg.
Nicaragua.
Servia.
Switzerland.

APPENDIX 4.

INTERNATIONAL CONVENTION FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK IN ARMIES IN THE FIELD.

Signed at Geneva, 6th July, 1906.

[British Ratification deposited at Berne, 16th April, 1907.]

(Translation.)

Convention pour l'Amélioration du Sort des Blessés et Malades dans les Armées en Campagne.

Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field.

SA Majesté le Roi du Royaume-Uni de la Grande-Bretagne et d'Irlande, Empereur des Indes;

His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India;

[Here follows the list of other Sovereigns and Heads of States who sent plenipotentiaries to the Conference.]

Également animés du désir de diminuer, autant qu'il dépend d'eux, les maux inséparables de la guerre et vœulant, dans ce but, perfectionner et compléter les dispositions convenues à Genève, le 22 août, 1864, pour l'amélioration du sort des militaires blessés

Being equally animated by the desire of mitigating, as far as possible, the evils inseparable from war, and desiring, with this end in view, to improve and to complete the arrangements agreed upon at Geneva on the 22nd August 1864, for the amelioration

ou malades dans les armées en campagne;

Ont résolu de conclure une nouvelle Convention à cet effet, et ont nommé pour leurs Plénipotentiaires, savoir:

of the condition of wounded or sick soldiers in armies in the field; **Ch. XIV.**

Have resolved to conclude for this purpose a new Convention, and have named as their Plenipotentiaries, that is to say:

[Here follows the list of Plenipotentiaries.]

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus de ce qui suit:

Who, after having communicated to each other their full powers, found in good and due form, have agreed as follows:

CHAPITRE PREMIER.—*Des Blessés et Malades.*

CHAPTER I.—*The Wounded and Sick.*

Article Premier.

Article 1.

Les militaires et les autres personnes officiellement attachées aux armées, qui seront blessés ou malades, devront être respectés et soignés, sans distinction de nationalité, par le belligérant qui les aura en son pouvoir.

Officers and soldiers, and other persons officially attached to armies, shall be respected and taken care of when wounded or sick, by the belligerent in whose power they may be, without distinction of nationality.

Toutefois, le belligérant, obligé d'abandonner des malades ou des blessés à son adversaire, laissera avec eux, autant que les circonstances militaires le permettront, une partie de son personnel et de son matériel sanitaires pour contribuer à les soigner.

Nevertheless, a belligerent who is compelled to abandon sick or wounded to the enemy shall, as far as military exigencies permit, leave with them a portion of his medical personnel and material to contribute to the care of them.

Art. 2.

Art. 2.

Sous réserve des soins à leur fournir en vertu de l'article précédent, les blessés ou malades d'une armée tombés au pouvoir de l'autre belligérant sont prisonniers de guerre et les règles générales du droit des gens concernant les prisonniers leur sont applicables.

Except as regards the treatment to be provided for them in virtue of the preceding Article, the wounded and sick of an army who fall into the hands of the enemy are prisoners of war, and the general provisions of international law concerning prisoners are applicable to them.

Cependant, les belligérants restent libres de stipuler entre eux, à l'égard des prisonniers blessés ou malades, telles clauses d'exception ou de faveur qu'ils jugeront utiles; ils auront, notamment, la faculté de convenir:

Belligerents are, however, free to arrange with one another such exceptions and mitigations with reference to sick and wounded prisoners as they may judge expedient; in particular they will be at liberty to agree—

De se remettre réciproquement, après un combat, les blessés laissés sur le champ de bataille;

To restore to one another the wounded left on the field after a battle;

De renvoyer dans leur pays, après les avoir mis en état d'être transportés ou après guérison, les blessés ou malades qu'ils ne voudront pas garder prisonniers;

To repatriate any wounded and sick whom they do not wish to retain as prisoners, after rendering them fit for removal or after recovery;

De remettre à un État neutre, du consentement de celui-ci, des blessés ou malades de la partie adverse, à la charge par l'État neutre de les internier jusqu'à la fin des hostilités.

To hand over to a neutral State, with the latter's consent, the enemy's wounded and sick to be interned by the neutral State until the end of hostilities.

Art. 3.

Art. 3.

Après chaque combat, l'occupant du champ de bataille prendra des mesures pour rechercher les blessés et pour les faire protéger, ainsi que les morts, contre le pillage et les mauvais traitements.

After each engagement the Commander in possession of the field shall take measures to search for the wounded, and to insure protection against pillage and maltreatment both for the wounded and for the dead.

Oh. XIV. Il veillera à ce que l'inhumation ou l'incinération des morts soit précédée d'un examen attentif de leurs cadavres.

He shall arrange that a careful examination of the bodies is made before the dead are buried or cremated.

Art. 4.

Chaque belligérant enverra, dès qu'il sera possible, aux autorités de leur pays ou de leur armée les marques ou pièces militaires d'identité trouvées sur les morts et l'état nominatif des blessés ou malades recueillis par lui.

Les belligérants se tiendront réciproquement au courant des internements et des mutations, ainsi que des entrées dans les hôpitaux et des décès survenus parmi les blessés et malades en leur pouvoir. Ils recueilleront tous les objets d'un usage personnel, valeurs, lettres, etc., qui seront trouvés sur les champs de bataille ou délaissés par les blessés ou malades décédés dans les établissements et formations sanitaires, pour les faire transmettre aux intéressés par les autorités de leur pays.

Art. 4.

As early as possible each belligerent shall send to the authorities of the country or army to which they belong the military identification marks or tokens found on the dead, and a nominal roll of the wounded or sick who have been collected by him.

The belligerents shall keep each other mutually informed of any internments and changes, as well as of admissions into hospital and deaths among the wounded and sick in their hands. They shall collect all the articles of personal use, valuables, letters, etc., which are found on the field of battle or left by the wounded or sick who have died in the medical establishments or units, in order that such objects may be transmitted to the persons interested by the authorities of their own country.

Art. 5.

L'autorité militaire pourra faire appel au zèle charitable des habitants pour recueillir et soigner, sous son contrôle, des blessés ou malades des armées, en accordant aux personnes ayant répondu à cet appel une protection spéciale et certaines immunités.

Art. 5.

The competent military authority may appeal to the charitable zeal of the inhabitants to collect and take care of, under his direction, the wounded or sick of armies, granting to those who respond to the appeal special protection and certain immunities.

CHAPITRE II — *Des Formations et Établissements Sanitaires.*

CHAPTER II. — *Medical Units and Establishments.*

Art. 6.

Les formations sanitaires mobiles (c'est-à-dire celles qui sont destinées à accompagner les armées en campagne) et les établissements fixes du service de santé seront respectés et protégés par les belligérants.

Art. 6.

Mobile medical units (that is to say, those which are intended to accompany armies into the field) and the fixed establishments of the medical service shall be respected and protected by the belligerents.

Art. 7.

La protection due aux formations et établissements sanitaires cesse si l'on en use pour commettre des actes nuisibles à l'ennemi.

Art. 7.

The protection to which medical units and establishments are entitled ceases if they are made use of to commit acts harmful to the enemy.

Art. 8.

Ne sont pas considérés comme étant de nature à priver une formation ou un établissement sanitaire de la protection assurée par l'article 6 :

1°. Le fait que le personnel de la formation ou de l'établissement est

Art. 8.

The following facts are not considered to be of a nature to deprive a medical unit or establishment of the protection guaranteed by Article 6 :—

1. That the personnel of the unit or of the establishment is armed, and

armé et qu'il use de ses armes pour sa propre défense ou celle de ses malades et blessés;

2°. Le fait qu'à défaut d'infirmiers armés, la formation ou l'établissement est gardé par un piquet ou des sentinelles munis d'un mandat régulier;

3°. Le fait qu'il est trouvé dans la formation ou l'établissement des armes et cartouches retirées aux blessés et n'ayant pas encore été versées au service compétent.

that it uses its arms for its own defence or for that of the sick and wounded under its charge. **Ch. XIV.**

2. That in default of armed orderlies the unit or establishment is guarded by a piquet or by sentinels furnished with an authority in due form.

3. That weapons and cartridges taken from the wounded and not yet handed over to the proper department are found in the unit or establishment.

CHAPITRE III.—Du Personnel.

CHAPTER III.—Personnel.

Art. 9.

Le personnel exclusivement affecté à l'enlèvement, au transport et au traitement des blessés et des malades, ainsi qu'à l'administration des formations et établissements sanitaires, les aumôniers attachés aux armées, seront respectés et protégés en toute circonstance; s'ils tombent entre les mains de l'ennemi, ils ne seront pas traités comme prisonniers de guerre.

Ces dispositions s'appliquent au personnel de garde des formations et établissements sanitaires dans le cas prévu à l'article 8, n° 2.

Art. 9.

The personnel engaged exclusively in the collection, transport, and treatment of the wounded and the sick, as well as in the administration of medical units and establishments, and the Chaplains attached to armies, shall be respected and protected under all circumstances. If they fall into the hands of the enemy they shall not be treated as prisoners of war.

These provisions apply to the guard of medical units and establishments under the circumstances indicated in Article 8 (2).

Art. 10.

Est assimilé au personnel visé à l'article précédent le personnel des Sociétés de secours volontaires dûment reconnues et autorisées par leur Gouvernement, qui sera employé dans les formations et établissements sanitaires des armées, sous la réserve que ledit personnel sera soumis aux lois et règlements militaires.

Chaque État doit notifier à l'autre soit dès le temps de paix, soit à l'ouverture ou au cours des hostilités, en tout cas avant tout emploi effectif, les noms des Sociétés qu'il a autorisées à prêter leur concours, sous sa responsabilité, au service sanitaire officiel de ses armées.

Art. 10.

The personnel of Voluntary Aid Societies, duly recognized and authorized by their Government, who may be employed in the medical units and establishments of armies, is placed on the same footing as the personnel referred to in the preceding Article, provided always that the first-mentioned personnel shall be subject to military law and regulations.

Each State shall notify to the other, either in time of peace or at the commencement of, or during the course of hostilities, but in every case before actually employing them, the names of the Societies which it has authorized, under its responsibility, to render assistance to the regular medical service of its armies.

Art. 11.

Une Société reconnue d'un pays neutre ne peut prêter le concours de ses personnels et formations sanitaires à un belligérant qu'avec l'assentiment préalable de son propre Gouvernement et l'autorisation du belligérant lui-même.

Le belligérant qui a accepté le secours est tenu, avant tout emploi, d'en faire la notification à son ennemi.

Art. 11.

A recognized Society of a neutral country can only afford the assistance of its medical personnel and units to a belligerent with the previous consent of its own Government and the authorization of the belligerent concerned.

A belligerent who accepts such assistance is bound to notify the fact to his adversary before making any use of it.

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Art. 12.

Les personnes désignées dans les articles 9, 10 et 11 continueront, après qu'elles seront tombées au pouvoir de l'ennemi, à remplir leurs fonctions sous sa direction.

Lorsque leur concours ne sera plus indispensable, elles seront renvoyées à leur armée ou à leur pays dans les délais et suivant l'itinéraire compatibles avec les nécessités militaires.

Elles emporteront, alors, les effets, les instruments, les armes et les chevaux qui sont leur propriété particulière.

Art. 12.

The persons designated in Article 9, 10, and 11, after they have fallen into the hands of the enemy, shall continue to carry on their duties under his direction.

When their assistance is no longer indispensable, they shall be sent back to their army or to their country at such time and by such route as may be compatible with military exigencies.

They shall then take with them such effects, instruments, arms, and horses as are their private property.

Art. 13.

L'ennemi assurera au personnel visé par l'article 9, pendant qu'il sera en son pouvoir, les mêmes allocations et la même solde qu'au personnel des mêmes grades de son armée.

Art. 13.

The enemy shall secure to the persons mentioned in Article 9, while in his hands, the same allowances and the same pay as are granted to the persons holding the same rank in his own army.

CHAPITRE IV.—*Du Matériel.*CHAPTER IV.—*Material.*

Art. 14.

Les formations sanitaires mobiles conserveront, si elles tombent au pouvoir de l'ennemi, leur matériel, y compris les attelages, quels que soient les moyens de transport et le personnel conducteur.

Toutefois, l'autorité militaire compétente aura la faculté de s'en servir pour les soins des blessés et malades; la restitution du matériel aura lieu dans les conditions prévues pour le personnel sanitaire, et, autant que possible, en même temps.

Art. 14.

If mobile medical units fall into the hands of the enemy they shall retain their material, including their teams, irrespectively of the means of transport and the drivers employed.

Nevertheless, the competent military authority shall be free to use the material for the treatment of the wounded and sick. It shall be restored under the conditions laid down for the medical personnel, and so far as possible at the same time.

Art. 15.

Les bâtiments et le matériel des établissements fixes demeurent soumis aux lois de la guerre, mais ne pourront être détournés de leur emploi, tant qu'ils seront nécessaires aux blessés et aux malades.

Toutefois, les commandants des troupes d'opérations pourront en disposer, en cas de nécessités militaires importantes, en assurant au préalable le sort des blessés et malades qui s'y trouvent.

Art. 15.

The buildings and material of fixed establishments remain subject to the laws of war, but may not be diverted from their purpose so long as they are necessary for the wounded and the sick.

Nevertheless, the Commanders of troops in the field may dispose of them, in case of urgent military necessity, provided they make previous arrangements for the welfare of the wounded and sick who are found there.

Art. 16.

Le matériel des Sociétés de secours, admises au bénéfice de la Convention conformément aux conditions déterminées par celle-ci, est considéré comme propriété privée et, comme tel, respecté en toute circonstance, sauf le droit de réquisition reconnu aux belligérants selon les lois et usages de la guerre.]

Art. 16.

The material of Voluntary Aid Societies which are admitted to the privileges of the Convention under the conditions laid down therein is considered private property, and, as such, to be respected under all circumstances, saving only the right of requisition recognized for belligerents in accordance with the laws and customs of war.

CHAPITRE V.—Des Convois
d'Évacuation.

CHAPTER V.—Convoys of Evacuation. CH. XIV.

Art. 17.

Les convois d'évacuation seront traités comme les formations sanitaires mobiles, sauf les dispositions spéciales suivantes :

1°. Le belligérant interceptant un convoi pourra, si les nécessités militaires l'exigent, le disloquer en se chargeant des malades et blessés qu'il contient.

2°. Dans ce cas, l'obligation de renvoyer le personnel sanitaire, prévue à l'article 12, sera étendue à tout le personnel militaire préposé au transport ou à la garde du convoi et muni à cet effet d'un mandat régulier.

L'obligation de rendre le matériel sanitaire, prévue à l'article 14, s'appliquera aux trains de chemins de fer et bateaux de la navigation intérieure spécialement organisés pour les évacuations, ainsi qu'au matériel d'aménagement des voitures, trains et bateaux ordinaires appartenant au service de santé.

Les voitures militaires, autres que celles du service de santé, pourront être capturées avec leurs attelages.

Le personnel civil et les divers moyens de transport provenant de la réquisition, y compris le matériel de chemin de fer et les bateaux utilisés pour les convois, seront soumis aux règles générales du droit des gens.

Art. 17.

Convoys of evacuation shall be treated like mobile medical units, subject to the following special provisions :—

1. A belligerent intercepting a convoy may break it up if military exigencies demand, provided he takes charge of the sick and wounded who are in it.

2. In this case, the obligation to send back the medical personnel, provided for in Article 12, shall be extended to the whole of the military personnel detailed for the transport or the protection of the convoy, and furnished with an authority in due form to that effect.

The obligation to restore the medical material, provided for in Article 14, shall apply to railway trains and boats used in internal navigation, which are specially arranged for evacuations, as well as to the material belonging to the medical service for fitting up ordinary vehicles, trains, and boats.

Military vehicles, other than those of the medical service, may be captured with their teams.

The civilian personnel and the various means of transport obtained by requisition, including railway material and boats used for convoys, shall be subject to the general rules of international law.

CHAPITRE VI.—Du Signe Distinctif.

CHAPTER VI.—The Distinctive Emblem.

Art. 18.

Par hommage pour la Suisse, le signe héraldique de la croix rouge sur fond blanc, formé par inversion des couleurs fédérales, est maintenu comme emblème et signe distinctif du service sanitaire des armées.

Art. 18.

As a compliment to Switzerland, the heraldic emblem of the red cross on a white ground, formed by reversing the Federal colours, is retained as the emblem and distinctive sign of the medical service of armies.

Art. 19.

Cet emblème figure sur les drapeaux, les brassards, ainsi que sur tout le matériel se rattachant au service sanitaire, avec la permission de l'autorité militaire compétente.

Art. 19.

With the permission of the competent military authority this emblem shall be shown on the flags and armlets (brassards), as well as on all the material belonging to the Medical Service.

Art. 20.

Le personnel protégé en vertu des articles 9, alinéa 1^{er}, 10 et 11 porte, fixé au bras gauche, un brassard avec croix rouge sur fond blanc, délivré et timbré par l'autorité militaire compétente, accompagné d'un certificat d'identité pour les personnes rat-

Art. 20.

The personnel protected in pursuance of Articles 9 (paragraph 1), 10, and 11 shall wear, fixed to the left arm, an armlet (brassard) with a red cross on a white ground, delivered and stamped by the competent military authority, and accompanied by a certificate of

Ch. XIV. *tachées au service de santé des armées et qui n'auraient pas d'uniforme militaire.*

Art. 21.

Le drapeau distinctif de la Convention ne peut être arboré que sur les formations et établissements sanitaires qu'elle ordonne de respecter et avec le consentement de l'autorité militaire. Il devra être accompagné du drapeau national du belligérant dont relève la formation ou l'établissement.

Toutefois, les formations sanitaires tombées au pouvoir de l'ennemi n'arboreront pas d'autre drapeau que celui de la Croix-Rouge, aussi longtemps qu'elles se trouveront dans cette situation.

Art. 22.

Les formations sanitaires des pays neutres qui, dans les conditions prévues par l'article 11, auraient été autorisées à fournir leurs services, doivent arborer, avec le drapeau de la Convention, le drapeau national du belligérant dont elles relèvent.

Les dispositions du deuxième alinéa de l'article précédent leur sont applicables.

Art. 23 (a).

L'emblème de la croix rouge sur fond blanc et les mots *Croix-Rouge* ou *Croix de Genève* ne pourront être employés, soit en temps de paix, soit en temps de guerre, que pour protéger ou désigner les formations et établissements sanitaires, le personnel et le matériel protégés par la Convention.

CHAPITRE VII.—De l'Application et de l'Exécution de la Convention.

Art. 24.

Les dispositions de la présente Convention ne sont obligatoires que pour les Puissances contractantes, en cas de guerre entre deux ou plusieurs d'entre elles. Ces dispositions cesseront d'être obligatoires du moment où l'une des Puissances belligérantes ne serait pas signataire de la Convention.

Art. 25.

Les commandants en chef des armées belligérantes auront à pourvoir aux

identity in the case of persons who are attached to the medical service of armies, but who have not a military uniform.

Art. 21.

The distinctive flag of the Convention shall only be hoisted over those medical units and establishments which are entitled to be respected under the Convention, and with the consent of the military authorities. It must be accompanied by the national flag of the belligerent to whom the unit or establishment belongs.

Nevertheless, medical units which have fallen into the hands of the enemy, so long as they are in that situation, shall not fly any other flag than that of the Red Cross.

Art. 22.

The medical units belonging to neutral countries which may be authorized to afford their services under the conditions laid down in Article 11 shall fly, along with the flag of the Convention, the national flag of the belligerent to whose army they are attached.

The provisions of the second paragraph of the preceding Article are applicable to them.

Art. 23 (a).

The emblem of the red cross on a white ground and the words "Red Cross" or "Geneva Cross" shall not be used, either in time of peace or in time of war, except to protect or to indicate the medical units and establishments and the personnel and material protected by the Convention.

CHAPTER VII.—Application and Carrying out of the Convention.

Art. 24.

The provisions of the present Convention are only binding upon the Contracting Powers in the case of war between two or more of them. These provisions shall cease to be binding from the moment when one of the belligerent Powers is not a party to the Convention.

Art. 25.

The Commanders-in-chief of belligerent armies shall arrange the details

(a) Great Britain signed the Convention under reserve of this article. See, however, para. 210, second footnote.

détails d'exécution des articles précédents, ainsi qu'aux cas non prévus, d'après les instructions de leurs Gouvernements respectifs et conformément aux principes généraux de la présente Convention.

Art. 26.

Les Gouvernements signataires prendront les mesures nécessaires pour instruire leurs troupes, et spécialement le personnel protégé, des dispositions de la présente Convention et pour les porter à la connaissance des populations.

for carrying out the preceding Articles, as well as for cases not provided for, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention.

Art. 26.

The Signatory Governments will take the necessary measures to instruct their troops, especially the personnel protected, in the provisions of the present Convention, and to bring them to the notice of the civil population.

CHAPITRE VIII.—*De la Répression des Abus et des Infractions.*

Art. 27 (a).

Les Gouvernements signataires, dont la législation ne serait pas dès à présent suffisante, s'engagent à prendre ou à proposer à leurs législatures les mesures nécessaires pour empêcher en tout temps l'emploi, par des particuliers ou par des sociétés autres que celles y ayant droit en vertu de la présente Convention, de l'emblème ou de la dénomination de *Croix-Rouge* ou *Croix de Genève*, notamment, dans un but commercial, par le moyen de marques de fabrique ou de commerce.

L'interdiction de l'emploi de l'emblème ou de la dénomination dont il s'agit produira son effet à partir de l'époque déterminée par chaque législation et, au plus tard, cinq ans après la mise en vigueur de la présente Convention. Dès cette mise en vigueur, il ne sera plus licite de prendre une marque de fabrique ou de commerce contraire à l'interdiction.

Art. 28 (b).

Les Gouvernements signataires s'engagent également à prendre ou à proposer à leurs législatures, en cas d'insuffisance de leurs lois pénales militaires, les mesures nécessaires pour réprimer, en temps de guerre, les actes individuels de pillage et de mauvais traitements envers des blessés et malades des armées, ainsi que pour punir, comme usurpation d'insignes militaires, l'usage abusif du drapeau et du brassard de la Croix-Rouge par des militaires ou des particuliers non protégés par la présente Convention.

CHAPTER VIII.—*Prevention of Abuses and Infractions.*

Art. 27 (a).

The Signatory Governments, in countries the legislation of which is not at present adequate for the purpose, undertake to adopt or to propose to their legislative bodies such measures as may be necessary to prevent at all times the employment of the emblem or the name of Red Cross or Geneva Cross by private individuals or by Societies other than those which are entitled to do so under the present Convention, and in particular for commercial purposes as a trade-mark or trading mark.

The prohibition of the employment of the emblem or the names in question shall come into operation from the date fixed by each legislature, and at the latest five years after the present Convention comes into force. From that date it shall no longer be lawful to adopt a trade-mark or trading mark contrary to this prohibition.

Art. 28 (b).

The Signatory Governments also undertake to adopt, or to propose to their legislative bodies, should their military law be insufficient for the purpose, the measures necessary for the repression in time of war of individual acts of pillage and maltreatment of the wounded and sick of armies, as well as for the punishment, as an unlawful employment of military insignia, of the improper use of the Red Cross flag and armband (brassard) by officers and soldiers or private individuals not protected by the present Convention.

(a) Great Britain signed the Convention under reserve of this article. See, however, para. 210, second footnote.

(b) Great Britain signed the Convention with reserve of this Article. See para. 180, footnote.

Ch. XIV. Ils se communiqueront, par l'intermédiaire du Conseil fédéral suisse, les dispositions relatives à cette répression, au plus tard dans les cinq ans de la ratification de la présente Convention.

They shall communicate to one another, through the Swiss Federal Council, the provisions relative to these measures of repression at the latest within five years from the ratification of the present Convention.

Dispositions Générales.

Art. 29.

La présente Convention sera ratifiée aussitôt que possible. Les ratifications seront déposées à Berne.

Il sera dressé du dépôt de chaque ratification un procès-verbal dont une copie, certifiée conforme sera remise par la voie diplomatique à toutes les Puissances contractantes.

Art. 30.

La présente Convention entrera en vigueur pour chaque Puissance six mois après la date du dépôt de sa ratification.

Art. 31.

La présente Convention, dûment ratifiée, remplacera la Convention du 22 août 1864 dans les rapports entre les États contractants.

La Convention de 1864 reste en vigueur dans les rapports entre les Parties qui l'ont signée et qui ne ratifieraient pas également la présente Convention.

Art. 32.

La présente Convention pourra, jusqu'au 31 décembre prochain, être signée par les Puissances représentées à la Conférence qui s'est ouverte à Genève le 11 juin 1906, ainsi que par les Puissances non représentées à cette Conférence qui ont signé la Convention de 1864.

Celles de ces Puissances qui, au 31 décembre 1906, n'auront pas signé la présente Convention, resteront libres d'y adhérer par la suite. Elles auront à faire connaître leur adhésion au moyen d'une notification écrite adressée au Conseil fédéral suisse et communiquée par celui-ci à toutes les Puissances contractantes.

Les autres Puissances pourront demander à adhérer dans la même forme, mais leur demande ne produira effet que si, dans le délai d'un an à partir de la notification au Conseil fédéral, celui-ci n'a reçu d'opposition de la part d'aucune des Puissances contractantes.

General Provisions.

Art. 29.

The present Convention shall be ratified as soon as possible. The ratifications shall be deposited at Berne.

When each ratification is deposited a *procès-verbal* shall be drawn up, and a copy thereof certified as correct shall be forwarded through the diplomatic channel to all the Contracting Powers.

Art. 30.

The present Convention shall come into force for each Power six months after the date of the deposit of its ratification.

Art. 31.

The present Convention, duly ratified, shall replace the Convention of the 22nd August, 1864, in relations between the Contracting States.

The Convention of 1864 remains in force between such of the parties who signed it who may not likewise ratify the present Convention.

Art. 32.

The present Convention may be signed until the 31st December next by the Powers represented at the Conference which was opened at Geneva on the 11th June, 1906, as also by the Powers, not represented at that Conference, which signed the Convention of 1864.

Such of the aforesaid Powers as shall have not signed the present Convention by the 31st December, 1906, shall remain free to accede to it subsequently. They shall notify their accession by means of a written communication addressed to the Swiss Federal Council, and communicated by the latter to all the Contracting Powers.

Other Powers may apply to accede in the same manner, but their request shall only take effect if within a period of one year from the notification of it to the Federal Council no objection to it reaches the Council from any of the Contracting Powers.

Art. 33.

Chaque des Parties contractantes aura la faculté de dénoncer la présente Convention. Cette dénonciation ne produira ses effets qu'un an après la notification faite par écrit au Conseil fédéral suisse; celui-ci communiquera immédiatement la notification à toutes les autres Parties contractantes.

Cette dénonciation ne vaudra qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi, les Plénipotentiaires ont signé la présente Convention et l'ont revêtue de leurs cachets.

Fait à Genève, le six juillet mil neuf cent six, en un seul exemplaire, qui restera déposé dans les archives de la Confédération suisse, et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances contractantes.

[Here follow the signatures of the plenipotentiaries.] Great Britain signed under reserve of Arts. 23, 27 and 28. Persia under reserve of Art. 18.

The Ratifications of the following States have up to the present been deposited:—

Great Britain.
Siam.
United States.
Russia.
Italy.
Switzerland.
Congo.
German Empire.
Mexico.
Denmark.
Brazil.
Luxemburg.
Belgium.

Spain.
Austria-Hungary
Japan and Corea.
Netherlands.
Chile.
Servia.
Norway.
Honduras.
Portugal.
Roumania.
Sweden.
Guatemala.
Bulgaria.

The following Accessions have been notified:—

Nicaragua.
Venezuela.
Turkey (a).
Colombia.

Cuba.
Paraguay.
Costa Rica.
Salvador.

(a) With certain reservations.

Art. 33.

Ch. XIV.

Each of the Contracting Powers shall be at liberty to denounce the present Convention. The denunciation shall not take effect until one year after the written notification of it has reached the Swiss Federal Council. The Council shall immediately communicate the notification to all the other Contracting Parties.

The denunciation shall only affect the Power which has notified it.

In witness whereof the Plenipotentiaries have signed the present Convention and have affixed thereto their seals.

Done at Geneva the 6th July, 1906, in a single copy, which shall be deposited in the archives of the Swiss Confederation, and of which copies certified as correct shall be forwarded to the Contracting Powers through the diplomatic channel.

APPENDIX 5.

INTERNATIONAL CONVENTION RELATIVE TO THE OPENING OF HOSTILITIES.

Signed at The Hague, 18th October, 1907.

[British Ratification deposited at The Hague, 27th November, 1909.]

(Translation.)

Convention relative à l'Ouverture des Hostilités.

Convention relative to the Opening Hostilities.

Sa Majesté le Roi du Royaume-Uni de Grande-Bretagne et d'Irlande et des Territoires Britanniques au delà des Mers, Empereur des Indes.

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India.

Ch. XIV. [Here follows the list of other Sovereigns and heads of States who sent Plenipotentiaries to the Conference.]

Considérant que, pour la sécurité des relations pacifiques, il importe que les hostilités ne commencent pas sans un avertissement préalable;

Qu'il importe, de même, que l'état de guerre soit notifié sans retard aux Puissances neutres;

Désirant conclure une Convention à cet effet, ont nommé pour leurs Plénipotentiaires, savoir:

[Here follow the names of the Plenipotentiaries.]

Lesquels, après avoir déposé leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes:—

Art. 1.

Les Puissances Contractantes reconnaissent que les hostilités entre elles ne doivent pas commencer sans un avertissement préalable et non équivoque, qui aura, soit la forme d'une déclaration de guerre motivée, soit celle d'un ultimatum avec déclaration de guerre conditionnelle.

Art. 2.

L'état de guerre devra être notifié sans retard aux Puissances neutres et ne produira effet à leur égard qu'après réception d'une notification qui pourra être faite même par voie télégraphique. Toutefois les Puissances neutres ne pourraient invoquer l'absence de notification, s'il était établi d'une manière non douteuse qu'en fait elles connaissaient l'état de guerre.

Art. 3.

L'Article 1 de la présente Convention produira effet en cas de guerre entre deux ou plusieurs des Puissances Contractantes.

L'Article 2 est obligatoire dans les rapports entre un belligérant contractant et les Puissances neutres également contractantes.

Art. 4.

La présente Convention sera ratifiée aussitôt que possible.

Les ratifications seront déposées à La Haye.

Le premier dépôt de ratifications sera constaté par un procès-verbal signé par les Représentants des Puissances qui y prennent part et par le Ministre des Affaires Étrangères des Pays-Bas.

Considering that it is important, in order to ensure the maintenance of pacific relations, that hostilities should not commence without previous warning.

That it is equally important that the existence of a state of war should be notified without delay to neutral Powers; and

Being desirous of concluding a Convention to this effect, have appointed the following as their Plenipotentiaries:

Who, after having deposited their full powers, found to be in good and due form, have agreed upon the following provisions:—

Art. 1.

The Contracting Powers recognize that hostilities between them must not commence without a previous and explicit warning in the form of either a declaration of war, giving reasons, or an ultimatum with a conditional declaration of war.

Art. 2.

The existence of a state of war must be notified to the neutral Powers without delay, and shall not be held to affect them until after the receipt of a notification, which may, however, be given by telegraph. Nevertheless, neutral Powers may not rely on the absence of notification if it be established beyond doubt that they were in fact aware of the existence of a state of war.

Art. 3.

Article 1 of the present Convention shall take effect in case of war between two or more of the Contracting Powers.

Article 2 applies as between a belligerent Power which is a party to the Convention and neutral Powers which are also parties to the Convention.

Art. 4.

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers which take part therein and by the Netherlands Minister for Foreign Affairs.

Les dépôts ultérieurs de ratifications se feront au moyen d'une notification écrite adressée au Gouvernement des Pays-Bas et accompagnée de l'instrument de ratification.

Copie certifiée conforme du procès-verbal relatif au premier dépôt de ratifications, des notifications mentionnées à l'alinéa précédent ainsi que des instruments de ratification, sera immédiatement remise par les soins du Gouvernement des Pays-Bas et par la voie diplomatique aux Puissances conviées à la Deuxième Conférence de la Paix, ainsi qu'aux autres Puissances qui auront adhéré à la Convention. Dans les cas visés par l'alinéa précédent, le dit Gouvernement leur fera connaître en même temps la date à laquelle il a reçu la notification.

Art. 5.

Les Puissances non-Signataires sont admises à adhérer à la présente Convention.

La Puissance qui désire adhérer notifie par écrit son intention au Gouvernement des Pays-Bas en lui transmettant l'acte d'adhésion, qui sera déposé dans les archives du dit Gouvernement.

Ce Gouvernement transmettra immédiatement à toutes les autres Puissances copie certifiée conforme de la notification ainsi que de l'acte d'adhésion en indiquant la date à laquelle il a reçu la notification.

Art. 6.

La présente Convention produira effet, pour les Puissances qui auront participé au premier dépôt de ratifications, soixante jours après la date du procès-verbal de ce dépôt, et, pour les Puissances qui ratifieront ultérieurement ou qui adhéreront, soixante jours après que la notification de leur ratification ou de leur adhésion aura été reçue par le Gouvernement des Pays-Bas.

Art. 7.

S'il arrivait qu'une des Hautes Parties Contractantes voulût dénoncer la présente Convention, la dénonciation sera notifiée par écrit au Gouvernement des Pays-Bas, qui communiquera immédiatement copie certifiée conforme de la notification à toutes les autres Puissances en leur faisant savoir la date à laquelle il l'a reçue.

La dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée et un an après que la notification en sera parvenue au Gouvernement des Pays-Bas.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent by the Netherland Government through the diplomatic channel to the Powers invited to the Second Peace Conference, as well as to the other Powers which have acceded to the Convention. The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

Art. 5.

Non-Signatory Powers may accede to the present Convention.

A Power which desires to accede notifies its intention in writing to the Netherland Government, forwarding to it the act of accession, which shall be deposited in the archives of the said Government.

The said Government shall immediately forward to all the other Powers a duly certified copy of the notification as well as of the act of accession, mentioning the date on which it received the notification.

Art. 6.

The present Convention shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently or which shall accede, sixty days after the notification of their ratification or of their accession has been received by the Netherland Government.

Art. 7.

In the event of one of the High Contracting Parties wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers, informing them of the date on which it was received.

The denunciation shall only operate in respect of the denouncing Power, and only on the expiry of one year after the notification has reached the Netherland Government.

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Art. 8.

Un registre tenu par le Ministère des Affaires Étrangères des Pays-Bas indiquera la date du dépôt de ratifications effectué en vertu de l'Article 4, alinéas 3 et 4, ainsi que la date à laquelle auront été reçues les notifications d'adhésion (Article 5, alinéa 2) ou de dénonciation (Article 7, alinéa 1).

Chaque Puissance Contractante est admise à prendre connaissance de ce registre et à en demander des extraits certifiés conformes.

En foi de quoi les Plénipotentiaires ont revêtu la présente Convention de leurs signatures.

Fait à La Haye, le 18 Octobre, 1907, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances qui ont été conviées à la Deuxième Conférence de la Paix.

The Convention was signed at The Hague by the Plenipotentiaries of 42 States.

The Ratifications of the following States have up to the present been deposited :—

Great Britain.
Germany.
United States.
Austria-Hungary.
Denmark.
Mexico.
Netherlands.
Russia.

Sweden.
Bolivia.
Salvador.
Haiti.
Japan.
Roumania.
Guatemala.
Panama.

Portugal.
Luxemburg.
France.
Norway.
Siam.
Switzerland.
Belgium.
Spain.

The following Accessions have been notified :—

Nicaragua.

China.

APPENDIX 6.

INTERNATIONAL CONVENTION CONCERNING THE LAWS AND CUSTOMS OF WAR ON LAND.

Signed at The Hague, 18th October, 1907.

[British Ratification deposited at The Hague, 27th November, 1909.]

(Translation.)

Convention concernant les Lois et Coutumes de la Guerre sur Terre.

Convention concerning the Laws and Customs of War on Land.

Sa Majesté le Roi du Royaume-Uni de Grande-Bretagne et d'Irlande et des Territoires Britanniques au delà des Mers, Empereur des Indes :

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India.

[Here follows the list of Sovereigns and Heads of States who sent Plenipotentiaries to the Conference.]

Considerant que, tout en recherchant les moyens de sauvegarder la paix et de prévenir les conflits armés entre les nations, il importe de se préoccuper également du cas où l'appel aux armes serait amené par des événements que leur sollicitude n'aurait pu détourner;

Animés du désir de servir encore, dans cette hypothèse extrême, les intérêts de l'humanité et les exigences toujours progressives de la civilisation;

Estimant qu'il importe, à cette fin, de reviser les lois et coutumes générales de la guerre, soit dans le but de les définir avec plus de précision, soit afin d'y tracer certaines limites destinées à en restreindre autant que possible les rigueurs;

Ont jugé nécessaire de compléter et de préciser sur certains points l'œuvre de la Première Conférence de la Paix, qui, s'inspirant, à la suite de la Conférence de Bruxelles de 1874, de ces idées recommandées par une sage et généreuse prévoyance, a adopté des dispositions ayant pour objet de définir et de régler les usages de la guerre sur terre.

Selon les vues des Hautes Parties Contractantes, ces dispositions, dont la rédaction a été inspirée par le désir de diminuer les maux de la guerre, autant que les nécessités militaires le permettent, sont destinées à servir de règle générale de conduite aux belligérants, dans leurs rapports entre eux et avec les populations.

Il n'a pas été possible toutefois de concerter dès maintenant des stipulations s'étendant à toutes les circonstances qui se présentent dans la pratique;

D'autre part, il ne pouvait entrer dans les intentions des Hautes Parties Contractantes que les cas non prévus fussent, faute de stipulation écrite, laissés à l'appréciation arbitraire de ceux qui dirigent les armées.

En attendant qu'un code plus complet des lois de la guerre puisse être édicté, les Hautes Parties Contractantes jugent opportun de constater que, dans les cas non compris dans les dispositions réglementaires adoptées par elles, les populations et les belligérants restent sous la sauve-garde et sous l'empire des principes du droit des gens, tels qu'ils résultent des usages établis entre nations civilisées, des lois de l'humanité et des exigences de la conscience publique.

Elles déclarent que c'est dans ce sens que doivent s'entendre notamment les Articles 1 et 2 du Règlement adopté.¹¹

Les Hautes Parties Contractantes, désirant conclure une nouvelle Con-

Considering that, while seeking means to preserve peace and prevent armed conflicts between nations, it is likewise necessary to bear in mind the case where an appeal to arms may be brought about by events beyond their responsibility to control;

Being animated also by the desire to serve, even in this extreme case, the interests of humanity and the ever-progressive needs of civilization; and

Thinking it important, with this object, to revise the general laws and customs of war, with the view on the one hand of defining them with greater precision, and, on the other hand, of confining them within limits intended to mitigate their severity as far as possible;

Have deemed it necessary to complete and render more precise in certain particulars the work of the First Peace Conference, which, following on the Brussels Conference of 1874, and inspired by the ideas dictated by a wise and generous forethought, adopted provisions intended to define and regulate the usages of war on land.

According to the views of the High Contracting Parties, these provisions, the drafting of which has been inspired by the desire to diminish the evils of war, so far as military requirements permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with the inhabitants.

It has not, however, been found possible at present to concert stipulations covering all the circumstances which arise in practice;

On the other hand, the High Contracting Parties clearly do not intend that unforeseen cases should, in default of written agreement, be left to the arbitrary opinion of military commanders.

Until a more complete code of the laws of war can be drawn up, the High Contracting Parties deem it expedient to declare that, in cases not covered by the rules adopted by them, the inhabitants and the belligerents remain under the protection and governance of the principles of the law of nations, derived from the usages established among civilized peoples, from the laws of humanity, and from the dictates of the public conscience.

They declare that it is in this sense especially that Articles 1 and 2 of the Regulations adopted must be understood.

The High Contracting Parties, wishing to conclude a fresh Convention

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Ch. XIV. vention à cet effet, ont nommé pour leurs Plénipotentiaires, savoir:

to this effect, have appointed as their Plenipotentiaries, that is to say:

[Here follow the names of the Plenipotentiaries.]

Lesquels, après avoir déposé leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus de ce qui suit:—

Who, after having deposited their full powers, found to be in good and due form, have agreed upon the following:—

Art. 1.

Les Puissances Contractantes donneront à leurs forces armées de terre des instructions qui seront conformes au Règlement concernant les Lois et Coutumes de la Guerre sur Terre, annexé à la présente Convention.

Art. 1.

The Contracting powers shall issue instructions to their armed land forces which shall be in conformity with the Regulations respecting the laws and Customs of War on Land, annexed to the present Convention.

Art. 2.

Les dispositions contenues dans le Règlement visé à l'Article 1 ainsi que dans la présente Convention ne sont applicables qu'entre les Puissances Contractantes, et seulement si les belligérants sont tous parties à la Convention.

Art. 2.

The provisions contained in the Regulations referred to in Article 1, as well as in the present Convention, do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

Art. 3.

La partie belligérante qui violerait les dispositions du dit Règlement sera tenue à indemnité, s'il y a lieu. Elle sera responsable de tous actes commis par les personnes faisant partie de sa force armée.

Art. 3.

A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

Art. 4.

La présente Convention dûment ratifiée remplacera, dans les rapports entre les Puissances Contractantes, la Convention du 29 Juillet, 1899, concernant les Lois et Coutumes de la Guerre sur Terre.

La Convention du 1899 reste en vigueur dans les rapports entre les Puissances qui l'ont signée et qui ne ratifieraient pas également la présente Convention.

Art. 4.

The present Convention, duly ratified, shall replace, as between the Contracting Powers, the Convention of the 29th July, 1899, respecting the Laws and Customs of War on land.

The Convention of 1899 remains in force as between the Powers which signed it, but which do not ratify the present Convention.

Art. 5.

La présente Convention sera ratifiée aussitôt que possible.

Les ratifications seront déposées à La Haye.

Le premier dépôt de ratifications sera constaté par un procès-verbal signé par les Représentants des Puissances qui y prennent part et par le Ministre des Affaires Étrangères des Pays-Bas.

Les dépôts ultérieurs de ratifications se feront au moyen d'une notification écrite adressée au Gouvernement des Pays-Bas et accompagnée de l'instrument de ratification.

Art. 5.

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

Copie certifiée conforme du procès-verbal relatif au premier dépôt de ratifications, des notifications mentionnées à l'alinéa précédent, ainsi que des instruments de ratification, sera immédiatement remise par les soins du Gouvernement des Pays-Bas et par la voie diplomatique aux Puissances conviées à la Deuxième Conférence de la Paix, ainsi qu'aux autres Puissances qui auront adhéré à la Convention. Dans les cas visés par l'alinéa précédent, le dit Gouvernement leur fera connaître en même temps la date à laquelle il a reçu la notification.

Art. 6.

Les Puissances non-Signataires sont admises à adhérer à la présente Convention.

La Puissance qui désire adhérer notifie par écrit son intention au Gouvernement des Pays-Bas en lui transmettant l'acte d'adhésion, qui sera déposé dans les archives du dit Gouvernement.

Ce Gouvernement transmettra immédiatement à toutes les autres Puissances copie certifiée conforme de la notification ainsi que de l'acte d'adhésion, en indiquant la date à laquelle il a reçu la notification.

Art. 7

La présente Convention produira effet, pour les Puissances qui auront participé au premier dépôt de ratifications, soixante jours après la date du procès-verbal de ce dépôt et, pour les Puissances qui ratifieront ultérieurement ou qui adhéreront, soixante jours après que la notification de leur ratification ou de leur adhésion aura été reçue par le Gouvernement des Pays-Bas.

Art. 8.

S'il arrivait qu'une des Puissances Contractantes voulût dénoncer la présente Convention, la dénonciation sera notifiée par écrit au Gouvernement des Pays-Bas, qui communiquera immédiatement copie certifiée conforme de la notification à toutes les autres Puissances en leur faisant savoir la date à laquelle il l'a reçue.

La dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée et un an après que la notification en sera parvenue au Gouvernement des Pays-Bas.

Art. 9.

Un registre tenu par le Ministère des Affaires Étrangères des Pays-Bas indiquera la date du dépôt de ratifications effectué en vertu de l'Article

A duly certified copy of the Protocol relating to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have acceded to the Convention. The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

Art. 6.

Non-Signatory Powers may accede to the present Convention.

A power which desires to accede notifies its intention in writing to the Netherland Government, forwarding to it the act of accession, which shall be deposited in the archives of the said Government.

The said Government shall immediately forward to all the other Powers a duly certified copy of the notification as well as of the act of accession, mentioning the date on which it received the notification.

Art. 7.

The present Convention shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently or which shall accede, sixty days after the notification of their ratification or of their accession has been received by the Netherland Government.

Art. 8.

In the event of one of the Contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers, informing them of the date on which it was received.

The denunciation shall only operate in respect of the denouncing Power, and only on the expiry of one year after the notification has reached the Netherland Government.

Art. 9.

A register kept by the Netherland Ministry for Foreign Affairs shall record the date of the deposit of ratifications effected in virtue of

Ch. XIV. 5, alinéas 3 et 4, ainsi que la date à laquelle auront été reçues les notifications d'adhésion (Article 6, alinéa 2) ou de dénonciation (Article 8, alinéa 1).

Chaque Puissance Contractante est admise à prendre connaissance de ce registre et à en demander des extraits certifiés conformes.

En foi de quoi les Plénipotentiaires ont revêtu la présente Convention de leurs signatures.

Fait à La Haye, le 18 Octobre, 1907, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas, et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances qui ont été conviées à la Deuxième Conférence de la Paix.

Article 5, paragraphs 3 and 4, as well as the date on which the notifications of accession (Article 6, paragraph 2) or of denunciation (Article 8, paragraph 1) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the Netherlands Government, and of which duly certified copies shall be sent, through the diplomatic channel, to the Powers invited to the Second Peace Conference.

ANNEX TO THE CONVENTION.

RÈGLEMENT CONCERNANT LES LOIS ET COÛTUMES DE LA GUERRE SUR TERRE.

SECTION I.—DES BELLIGÉRANTS.

CHAPITRE I.—*De la Qualité de Belligérant.*

Art. 1.

LES lois, les droits, et les devoirs de la guerre ne s'appliquent pas seulement à l'armée, mais encore aux milices et aux corps de volontaires réunissant les conditions suivantes :—

1. D'avoir à leur tête une personne responsable pour ses subordonnés;
2. D'avoir un signe distinctif fixe et reconnaissable à distance;
3. De porter les armes ouvertement; et
4. De se conformer dans leurs opérations aux lois et coutumes de la guerre.

Dans les pays où les milices ou des corps de volontaires constituent l'armée ou en font partie, ils sont compris sous la dénomination d'armée.

Art. 2.

La population d'un territoire non occupé qui, à l'approche de l'ennemi, prend spontanément les armes pour combattre les troupes d'invasion sans avoir eu le temps de s'organiser conformément à l'Article 1, sera considérée comme belligérante si elle porte les armes ouvertement et si elle respecte les lois et coutumes de la guerre.

REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND.

SECTION I.—OF BELLIGERENTS.

CHAPTER I.—*The Status of Belligerent.*

Art. 1.

THE laws, rights, and duties of war apply not only to the army, but also to militia and volunteer corps fulfilling all the following conditions:—

1. They must be commanded by a person responsible for his subordinates;
2. They must have a fixed distinctive sign recognizable at a distance;
3. They must carry arms openly; and
4. They must conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army."

Art. 2.

The inhabitants of a territory not under occupation, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if they carry arms openly, and if they respect the laws and customs of war.

Art. 3.

Les forces armées des parties belligérantes peuvent se composer de combattants et de non-combattants. En cas de capture par l'ennemi, les uns et les autres ont droit au traitement des prisonniers de guerre.

Art. 3.

The armed forces of the belligerents may consist of combatants and non-combatants. In the case of capture by the enemy, both have the right to be treated as prisoners of war.

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CHAPITRE II.—Des Prisonniers de Guerre.

CHAPTER II.—Prisoners of War.

Art. 4.

Les prisonniers de guerre sont au pouvoir du Gouvernement ennemi, mais non des individus ou des corps qui les ont capturés.

Ils doivent être traités avec humanité.

Tout ce qui leur appartient personnellement, excepté les armes, les chevaux, et les papiers militaires, reste leur propriété.

Art. 4.

Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers, remain their property.

Art. 5.

Les prisonniers de guerre peuvent être assujettis à l'internement dans une ville, forteresse, camp, ou localité quelconque, avec obligation de ne pas s'en éloigner au delà de certaines limites déterminées; mais ils ne peuvent être enfermés que par mesure de sûreté indispensable, et seulement pendant la durée des circonstances qui nécessitent cette mesure.

Art. 5.

Prisoners of war may be interned in a town, fortress, camp, or other place, and are bound not to go beyond certain fixed limits; but they cannot be placed in confinement except as an indispensable measure of safety, and only while the circumstances which necessitate the measure continue to exist.

Art. 6.

L'État peut employer, comme travailleurs, les prisonniers de guerre, selon leur grade et leurs aptitudes, à l'exception des officiers. Ces travaux ne seront pas excessifs et n'auront aucun rapport avec les opérations de la guerre.

Les prisonniers peuvent être autorisés à travailler pour le compte d'administrations publiques ou de particuliers, ou pour leur propre compte.

Les travaux faits pour l'État sont payés d'après les tarifs en vigueur pour les militaires de l'armée nationale exécutant les mêmes travaux, ou, s'il n'en existe pas, d'après un tarif en rapport avec les travaux exécutés.

Lorsque les travaux ont lieu pour le compte d'autres administrations publiques ou pour des particuliers, les conditions en sont réglées d'accord avec l'autorité militaire.

Le salaire des prisonniers contribuera à adoucir leur position, et le surplus leur sera compté au moment de leur libération, sans déduction des frais d'entretien.

Art. 6.

The State may employ the labour of prisoners of war, other than officers, according to their rank and capacity. The work shall not be excessive, and shall have no connection with the operations of the war.

Prisoners may be authorized to work for the public service, for private persons, or on their own account.

Work done for the State is paid for at rates proportional to the work of a similar kind executed by soldiers of the national army, or, if there are no such rates in force, at rates proportional to the work executed.

When the work is for other branches of the public service, or for private persons, the conditions are settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them on their release, deductions on account of the cost of maintenance excepted.

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Art. 7.

Le Gouvernement au pouvoir duquel se trouvent les prisonniers de guerre est chargé de leur entretien.

A défaut d'une entente spéciale entre les belligérants, les prisonniers de guerre seront traités pour la nourriture, le couchage, et l'habillement sur le même pied que les troupes du Gouvernement qui les aura capturés.

Art. 8.

Les prisonniers de guerre seront soumis aux lois, Règlements, et ordres en vigueur dans l'armée de l'État au pouvoir duquel ils se trouvent. Tout acte d'insubordination autorise, à leur égard, les mesures de rigueur nécessaires.

Les prisonniers évadés, qui seraient repris avant d'avoir pu rejoindre leur armée ou avant de quitter le territoire occupé par l'armée qui les aura capturés, sont passibles de peines disciplinaires.

Les prisonniers qui, après avoir réussi à s'évader, sont de nouveau faits prisonniers, ne sont passibles d'aucune peine pour la fuite antérieure.

Art. 9.

Chaque prisonnier de guerre est tenu de déclarer, s'il est interrogé à ce sujet, ses véritables noms et grade et, dans le cas où il enfreindrait cette règle, il s'exposerait à une restriction des avantages accordés aux prisonniers de guerre de sa catégorie.

Art. 10.

Les prisonniers de guerre peuvent être mis en liberté sur parole, si les lois de leur pays les y autorisent, et, en pareil cas, ils sont obligés, sous la garantie de leur honneur personnel, de remplir scrupuleusement, tant vis-à-vis de leur propre Gouvernement que vis-à-vis de celui qui les a faits prisonniers, les engagements qu'ils auraient contractés.

Dans le même cas, leur propre Gouvernement est tenu de n'exiger ni accepter d'eux aucun service contraire à la parole donnée.

Art. 11.

Un prisonnier de guerre ne peut être contraint d'accepter sa liberté sur parole; de même le Gouvernement ennemi n'est pas obligé d'accéder à la demande du prisonnier réclamant sa mise en liberté sur parole.

Art. 12.

Tout prisonnier de guerre libéré sur parole et repris portant les armes contre le Gouvernement envers lequel

Art. 7.

The Government into whose hands prisoners of war have fallen is charged with their maintenance.

In default of special agreement between the belligerents, prisoners of war shall be treated, as regards rations, quarters, and clothing, on the same footing as the troops of the Government which captured them.

Art. 8.

Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State in the power of which they are. Any act of insubordination justifies the adoption towards them of such measures of severity as may be considered necessary.

Escaped prisoners who are retaken before being able to rejoin their own army, or before leaving the territory occupied by the army which captured them, are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment on account of their previous escape.

Art. 9.

Every prisoner of war is bound to give, if questioned on the subject, his true name and rank, and if he infringes this rule he is liable to have the advantages given to prisoners of his class curtailed.

Art. 10.

Prisoners of war may be set at liberty on parole if the laws of their country allow it, and, in such cases, they are bound, on their personal honour, scrupulously to fulfil, both towards their own Government and the Government by which they were made prisoners, the engagements they may have contracted.

In such cases their own Government is bound neither to require of nor accept from them any service incompatible with the parole given.

Art. 11.

A prisoner of war cannot be compelled to accept his liberty on parole; similarly the hostile Government is not obliged to accede to the request of a prisoner to be set at liberty on parole.

Art. 12.

Prisoners of war liberated on parole and recaptured bearing arms against Government to which they had pledged

il s'était engagé d'honneur, ou contre les alliés de celui-ci, perd le droit au traitement des prisonniers de guerre, et peut être traduit devant les Tribunaux.

Art. 13.

Les individus qui suivent une armée sans en faire directement partie, tels que les correspondants et les reporters de journaux, les vivandiers, les fournisseurs, qui tombent au pouvoir de l'ennemi et que celui-ci juge utile de détenir, ont droit au traitement des prisonniers de guerre, à condition qu'ils soient munis d'une légitimation de l'autorité militaire de l'armée qu'ils accompagnaient.

Art. 14.

Il est constitué, dès le début des hostilités dans chacun des États belligérants, et, le cas échéant, dans les pays neutres qui auront recueilli des belligérants sur leur territoire, un bureau de renseignements sur les prisonniers de guerre. Ce bureau, chargé de répondre à toutes les demandes qui les concernent, reçoit des divers services compétents toutes les indications relatives aux internements et aux mutations, aux mises en liberté sur parole, aux échanges, aux évasions, aux entrées dans les hôpitaux, aux décès, ainsi que les autres renseignements nécessaires pour établir et tenir à jour une fiche individuelle pour chaque prisonnier de guerre. Le bureau devra porter sur cette fiche le numéro matricule, les nom et prénom, l'âge, le lieu d'origine, le grade, le corps de troupe, les blessures, la date, et le lieu de la capture, de l'internement, des blessures, et de la mort, ainsi que toutes les observations particulières. La fiche individuelle sera remise au Gouvernement de l'autre belligérant après la conclusion de la paix.

Le bureau de renseignements est également chargé de recueillir et de centraliser tous les objets d'un usage personnel, valeurs, lettres, &c., qui seront trouvés sur les champs de bataille ou délaissés par des prisonniers libérés sur parole, échangés, évadés, ou décédés dans les hôpitaux et ambulances, et de les transmettre aux intéressés.

Art. 15.

Les sociétés de secours pour les prisonniers de guerre, régulièrement constituées selon la loi de leur pays, et ayant pour objet d'être les intermédiaires de l'action charitable, recevront, de la part des belligérants, pour elles et pour leurs agents dûment accrédités, toute facilité dans les limites tracées par les

their honour, or against the allies of that Government, forfeit their right to be treated as prisoners of war, and may be put on trial before the Courts.

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Art. 13.

Individuals following an army without directly belonging to it, such as newspaper correspondents or reporters, sutlers or contractors, who fall into the enemy's hands, and whom the latter thinks it expedient to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army which they were accompanying.

Art. 14.

A bureau for information relative to prisoners of war is instituted at the commencement of hostilities in each of the belligerent States, and, when necessary, in neutral countries which have received belligerents on their territory. The business of this bureau is to reply to all inquiries about the prisoners, to receive from the various services concerned full information respecting internments and transfers, releases on parole, exchanges, escapes, admissions into hospital, deaths, as well as all other information necessary to enable it to make out and keep up to date an individual return for each prisoner of war. The bureau must state in this return the regimental number, name and surname, age, place of origin, rank, unit, wounds, date and place of capture, internment, wounding, and death, as well as any observations of a special character. The individual return shall be sent to the Government of the other belligerent after the conclusion of peace.

It is also the business of the information bureau to gather and keep together all personal effects, valuables, letters, etc., found on the field of battle or left by prisoners who have been released on parole, or exchanged, or who have escaped, or died in hospitals or ambulances, and to forward them to those concerned.

Art. 15.

Societies for the relief of prisoners of war, if properly constituted in accordance with the laws of their country, and with the object of serving as the channel for charitable effort, shall receive from the belligerents, for themselves and their duly accredited agents, every facility for the efficient performance

Ch. XIV. nécessités militaires et les règles administratives, pour accomplir efficacement leur tâche d'humanité. Les délégués de ces sociétés pourront être admis à distribuer des secours dans les dépôts d'internement, ainsi qu'aux lieux d'étape des prisonniers rapatriés, moyennant une permission personnelle délivrée par l'autorité militaire, et en prenant l'engagement par écrit de se soumettre à toutes les mesures d'ordre et de police que celle-ci prescrirait.

ance of their humane task within the bounds imposed by military exigencies and administrative regulations. Representatives of these societies, when furnished with a personal permit by the military authorities, may, on giving an undertaking in writing to comply with all measures of order and police which they may have to issue, be admitted to the places of internment for the purpose of distributing relief, as also to the halting places of repatriated prisoners.

Art. 16.

Les bureaux de renseignements jouissent de la franchise de port. Les lettres, mandats, et articles d'argent ainsi que les colis postaux destinés aux prisonniers de guerre ou expédiés par eux, seront affranchis de toutes les taxes postales, aussi bien dans les pays d'origine et de destination que dans les pays intermédiaires.

Les dons et secours en nature destinés aux prisonniers de guerre seront admis en franchise de tous droits d'entrée et autres, ainsi que des taxes de transport sur les chemins de fer exploités par l'État.

Art. 16.

Information bureaux enjoy the privilege of free carriage. Letters, money orders, and valuables, as well as postal parcels, intended for prisoners of war, or dispatched by them, shall be exempt from all postal charges in the countries of origin and destination, as well as in the countries they pass through.

Presents and relief in kind for prisoners of war shall be admitted free of all import or other duties, as well as any payment for carriage by State railways.

Art. 17.

Les officiers prisonniers recevront la solde à laquelle ont droit les officiers de même grade du pays où ils sont retenus, à charge de remboursement par leur Gouvernement.

Art. 17.

Officers taken prisoners shall receive the same rate of pay as officers of corresponding rank in the country where they are detained; the amount shall be refunded by their own Government.

Art. 18.

Toute latitude est laissée aux prisonniers de guerre pour l'exercice de leur religion, y compris l'assistance aux offices de leur culte, à la seule condition de se conformer aux mesures d'ordre et de police prescrites par l'autorité militaire.

Art. 18.

Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of their own Church, on the sole condition that they comply with the police regulations issued by the military authorities.

Art. 19.

Les testaments des prisonniers de guerre sont reçus ou dressés dans les mêmes conditions que pour les militaires de l'armée nationale.

On suivra également les mêmes règles en ce qui concerne les pièces relatives à la constatation des décès, ainsi que pour l'inhumation des prisonniers de guerre, en tenant compte de leur grade et de leur rang.

Art. 19.

The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army.

The same rules shall be followed as regards documents concerning the certification of the death and also as to the burials of prisoners of war, due regard being paid to their grade and rank.

Art. 20.

Après la conclusion de la paix, le rapatriement des prisonniers de guerre s'effectuera dans le plus bref délai possible.

Art. 20.

After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.

CHAPITRE III.—*Des Malades et des Blessés.*CHAPTER III.—*The Sick and Wounded.*

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Art. 21.

Les obligations des belligérants concernant le service des malades et des blessés sont régies par la Convention de Genève.

Art. 21.

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention.

SECTION II.—DES HOSTILITÉS.

SECTION II.—OF HOSTILITIES.

CHAPITRE I.—*Des Moyens de Nuire à l'Ennemi, des Sieges, et des Bombardements.*CHAPTER I.—*Means of Injuring the Enemy, Sieges, and Bombardments.*

Art. 22.

Les belligérants n'ont pas un droit illimité quant au choix des moyens de nuire à l'ennemi.

Art. 22.

Belligerents have not got an unlimited right as to the choice of means of injuring the enemy.

Art. 23.

Outre les prohibitions établies par des Conventions spéciales, il est notamment interdit—

Art. 23.

In addition to the prohibitions provided by special Conventions, it is particularly forbidden—

- (a.) D'employer du poison ou des armes empoisonnées;
- (b.) De tuer ou de blesser par trahison des individus appartenant à la nation ou à l'armée ennemies;
- (c.) De tuer ou de blesser un ennemi qui, ayant mis bas les armes ou n'ayant plus les moyens de se défendre, s'est rendu à discrétion;
- (d.) De déclarer qu'il ne sera pas fait de quartier;
- (e.) D'employer des armes, des projectiles, ou des matières propres à causer des maux superflus;
- (f.) D'user indûment du pavillon parlementaire, du pavillon national, ou des insignes militaires et de l'uniforme de l'ennemi, ainsi que des signes distinctifs de la Convention de Genève;
- (g.) De détruire ou de saisir des propriétés ennemies, sauf les cas où ces destructions ou ces saisies seraient impérieusement commandées par les nécessités de la guerre;
- (h.) De déclarer éteints, suspendus, ou non recevables en justice, les droits et actions des nationaux de la partie adverse.

- (a.) To employ poison or poisoned weapons;
- (b.) To kill or wound by treachery individuals belonging to the hostile nation or army;
- (c.) To kill or wound an enemy who, having laid down his arms, or no longer having means of defence, has surrendered at discretion;
- (d.) To declare that no quarter will be given;
- (e.) To employ arms, projectiles, or material calculated to cause unnecessary suffering;
- (f.) To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as of the distinctive signs of the Geneva convention;
- (g.) To destroy or seize enemy property, unless such destruction or seizure be imperatively demanded by the necessities of war;
- (h.) To declare abolished, suspended, or inadmissible the right of the subjects of the hostile party to institute legal proceedings.

Il est également interdit à un belligérant de forcer les nationaux de la partie adverse à prendre part aux opérations de guerre dirigées contre leur pays, même dans le cas où ils

A belligerent is likewise forbidden to compel the subjects of the hostile party to take part in the operations of war directed against their own country, even if they were in the service

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of the belligerent before the commencement of the war.

Art. 24.

Les ruses de guerre et l'emploi des moyens nécessaires pour se procurer des renseignements sur l'ennemi et sur le terrain sont considérés comme licites.

Art. 24.

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

Art. 25.

Il est interdit d'attaquer ou de bombarder, par quelque moyen que ce soit, des villes, villages, habitations, ou bâtiments qui ne sont pas défendus.

Art. 25.

The attack or bombardment, by any means whatever, of undefended towns, villages, dwellings, or buildings is forbidden.

Art. 26.

Le commandant des troupes assaillantes, avant d'entreprendre le bombardement, et sauf le cas d'attaque de vive force, devra faire tout ce qui dépend de lui pour en avertir les autorités.

Art. 26.

The officer in command of an attacking force must do all in his power to warn the authorities before commencing a bombardment, except in cases of assault.

Art. 27.

Dans les sièges et bombardements, toutes les mesures nécessaires doivent être prises pour épargner, autant que possible, les édifices consacrés aux cultes, aux arts, aux sciences, et à la bienfaisance, les monuments historiques, les hôpitaux, et les lieux de rassemblement de malades et de blessés, à condition qu'ils ne soient pas employés en même temps à un but militaire.

Art. 27.

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

Le devoir des assiégés est de désigner ces édifices ou lieux de rassemblement par des signes visibles spéciaux qui seront notifiés d'avance à l'assiégeant.

It is the duty of the besieged to indicate such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

Art. 28.

Il est interdit de livrer au pillage une ville ou localité même prise d'assaut.

Art. 28.

The giving over to pillage of a town or place, even when taken, by assault, is forbidden.

CHAPITRE II.—Des Espions.

CHAPTER II.—Spies.

Art. 29.

Ne peut être considéré comme espion que l'individu qui, agissant clandestinement ou sous de faux prétextes, recueille ou cherche à recueillir des informations dans la zone d'opérations d'un belligérant, avec l'intention de les communiquer à la partie adverse.

Art. 29.

A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavours to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Ainsi les militaires non déguisés qui ont pénétré dans la zone d'opérations de l'armée ennemie, à l'effet de recueillir des informations, ne sont pas considérés comme espions. De même,

Accordingly, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army for the purpose of obtaining information are not considered spies.

ne sont pas considérés comme espions les militaires et les non-militaires, accomplissant ouvertement leur mission, chargés de transmettre des dépêches destinées, soit à leur propre armée, soit à l'armée ennemie. A cette catégorie appartiennent également les individus envoyés en ballon pour transmettre les dépêches, et, en général, pour entretenir les communications entre les diverses parties d'une armée ou d'un territoire.

Art. 30.

L'espion pris sur le fait ne pourra être puni sans jugement préalable.

Art. 31.

L'espion qui, ayant rejoint l'armée à laquelle il appartient, est capturé plus tard par l'ennemi, est traité comme prisonnier de guerre et n'encourt aucune responsabilité pour ses actes d'espionnage antérieurs.

Similarly, the following are not considered spies: Soldiers and civilians entrusted with the delivery of despatches intended either for their own army or for the enemy's army, and carrying out their mission openly. To this class likewise belong persons sent in balloons for the purpose of carrying despatches and, generally, of maintaining communications between the different parts of an army or a territory.

Art. 30.

A spy taken in the act shall not be punished without previous trial.

Art. 31.

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts as a spy.

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CHAPITRE III.—Des Parlementaires.

Art. 32.

Est considéré comme parlementaire l'individu autorisé par l'un des belligérants à entrer en pourparlers avec l'autre et se présentant avec le drapeau blanc. Il a droit à l'inviolabilité ainsi que le trompette, clairon ou tambour, le porte-drapeau, et l'interprète qui l'accompagneraient.

Art. 33.

Le chef auquel un parlementaire est expédié n'est pas obligé de le recevoir en toutes circonstances.

Il peut prendre toutes les mesures nécessaires afin d'empêcher le parlementaire de profiter de sa mission pour se renseigner.

Il a le droit, en cas d'abus, de retenir temporairement le parlementaire.

Art. 34.

Le parlementaire perd ses droits d'inviolabilité, s'il est prouvé, d'une manière positive et irrécusable, qu'il a profité de sa position privilégiée pour provoquer ou commettre un acte de trahison (b).

CHAPTER III.—Flags of Truce (a).

Art. 32.

A person is regarded as bearing a flag of truce (a) who has been authorized by one of the belligerents to enter into communication with the other, and who presents himself under a white flag. He is entitled to inviolability, as also the trumpeter, bugler or drummer, the flag-bearer and the interpreter who might accompany him.

Art. 33.

The commander to whom a flag of truce is sent is not obliged in every case to receive it.

He may take all steps necessary in order to prevent the envoy (a) from taking advantage of his mission to obtain information.

In case of abuse, he has the right temporarily to detain the envoy (a).

Art. 34.

The envoy (a) loses his rights of inviolability if it is proved in a positive and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treachery (b).

(a) It would be preferable to use the word "parlementaire." It will be observed in this chapter of The Hague Rules that if it is not used "*parlementaire*" has to be translated in three different ways as "flags of truce," "a person . . . bearing a flag of truce," and the "envoy." See para. 224, footnote.

(b) "*Trahisson*" should here be translated "treason." See para. 251, footnote.

Ch. XIV. CHAPITRE IV.—*Des Capitulations.*

Art. 35.

Les capitulations arrêtées entre les parties contractantes doivent tenir compte des règles de l'honneur militaire.

Une fois fixées, elles doivent être scrupuleusement observées par les deux parties.

CHAPTER IV.—*Capitulations.*

Art. 35.

Capitulations agreed upon between the contracting parties must take into account the rules of military honour.

Once settled, they must be scrupulously observed by both parties.

CHAPITRE V.—*De l'Armistice.*

Art. 36.

L'armistice suspend les opérations de guerre par un accord mutuel des parties belligérantes. Si la durée n'en est pas déterminée, les parties belligérantes peuvent reprendre en tout temps les opérations, pourvu toutefois que l'ennemi soit averti en temps convenu, conformément aux conditions de l'armistice.

Art. 37.

L'armistice peut être général ou local. Le premier suspend partout les opérations de guerre des États belligérants; le second, seulement entre certaines fractions des armées belligérantes et dans un rayon déterminé.

Art. 38.

L'armistice doit être notifié officiellement et en temps utile aux autorités compétentes et aux troupes. Les hostilités sont suspendues immédiatement après la notification ou au terme fixé.

Art. 39.

Il dépend des parties contractantes de fixer, dans les clauses de l'armistice, les rapports qui pourraient avoir lieu, sur le théâtre de la guerre, avec les populations et entre elles.

Art. 40.

Toute violation grave de l'armistice, par l'une des parties, donne à l'autre le droit de le dénoncer et même, en cas d'urgence, de reprendre immédiatement les hostilités.

Art. 41.

La violation des clauses de l'armistice, par des particuliers agissant de leur propre initiative, donne droit seulement à réclamer la punition des coupables et, s'il y a lieu, une indemnité pour les pertes éprouvées.

CHAPTER V.—*Armistices.*

Art. 36.

An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

Art. 37.

An armistice may be general or local. The first suspends the entire military operations of the belligerent States; the second between certain portions of the belligerent armies only and within a fixed zone.

Art. 38.

An armistice must be notified officially and in good time to the competent authorities and to the troops. Hostilities are suspended immediately after the notification, or at the time fixed.

Art. 39.

It rests with the contracting parties to settle, in the terms of the armistice, the relations which may be allowed in the theatre of war with, and between, the civil populations.

Art. 40.

Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.

Art. 41.

A violation of the terms of the armistice by individuals acting on their own initiative only entitles the injured party to demand the punishment of the offenders and, if there is occasion for it, compensation for the losses sustained.

SECTION III.—DE L'AUTORITÉ MILITAIRE SUR LE TERRITOIRE DE L'ÉTAT ENNEMI.

Art. 42.

Un territoire est considéré comme occupé lorsqu'il se trouve placé de fait sous l'autorité de l'armée ennemie.

L'occupation ne s'étend qu'aux territoires (a) où cette autorité est établie et en mesure de s'exercer.

Art. 43.

L'autorité du pouvoir légal ayant passé de fait entre les mains de l'occupant, celui-ci prendra toutes les mesures qui dépendent de lui en vue de rétablir et d'assurer, autant qu'il est possible, l'ordre et la vie publics en respectant, sauf empêchement absolu, les lois en vigueur dans le pays.

Art. 44 (b).

Il est interdit à un belligérant de forcer la population d'un territoire occupé à donner des renseignements sur l'armée de l'autre belligérant ou sur ses moyens de défense.

Art. 45.

Il est interdit de contraindre la population d'un territoire occupé à prêter serment à la Puissance ennemie.

Art. 46.

L'honneur et les droits de la famille, la vie des individus, et la propriété privée, ainsi que les convictions religieuses et l'exercice des cultes, doivent être respectés.

La propriété privée ne peut pas être confisquée.

Art. 47.

Le pillage est formellement interdit.

Art. 48.

Si l'occupant prélève, dans le territoire occupé, les impôts, droits, et péages établis au profit de l'État, il le fera, autant que possible, d'après les règles de l'assiette et de la répartition en vigueur, et il en résultera pour lui l'obligation de pourvoir aux frais de l'administration du territoire occupé dans la mesure où le Gouvernement légal y était tenu.

SECTION III.—MILITARY AUTHORITY OVER THE TERRITORY OF THE HOSTILE STATE. CH. XIV.

Art. 42.

Territory is considered occupied when actually placed under the authority of the hostile army.

The occupation extends only to the territory (a) where such authority has been established and is in a position to assert itself.

Art. 43.

The authority of the power of the State having passed *de facto* into the hands of the occupant, the latter shall do all in his power to restore, and ensure, as far as possible, public order and safety, respecting at the same time, unless absolutely prevented, the laws in force in the country.

Art. 44 (b).

A belligerent is forbidden to compel the inhabitants of territory occupied by it to furnish information about the army of the other belligerent, or about its means of defence.

Art. 45.

It is forbidden to force the inhabitants of occupied territory to swear allegiance to the hostile Power.

Art. 46.

Family honour and rights, individual life, and private property, as well as religious convictions and worship, must be respected.

Private property may not be confiscated.

Art. 47.

Pillage is expressly forbidden.

Art. 48.

If, in the territory occupied, the occupant collects the taxes, dues, and tolls payable to the State, he shall do so, as far as is possible, in accordance with the legal basis and assessment in force at the time, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the national Government had been so bound.

(a) The translation should be "territories."

(b) This article has not been accepted by Germany and Russia.

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Art. 49.

Si, en dehors des impôts visés à l'Article précédent, l'occupant prélève d'autres contributions en argent dans le territoire occupé, ce ne pourra être que pour les besoins de l'armée ou de l'administration de ce territoire.

Art. 49.

If, in addition to the taxes mentioned in the above Article, the occupant levies other money contributions in the occupied territory, they shall only be applied to the needs of the army or of the administration of the territory in question.

Art. 50.

Aucune peine collective, pécuniaire ou autre, ne pourra être édictée contre les populations à raison de faits individuels dont elles ne pourraient être considérées comme solidairement responsables.

Art. 50.

No collective penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which it cannot be regarded as collectively responsible.

Art. 51.

Aucune contribution ne sera perçue qu'en vertu d'un ordre écrit et sous la responsabilité d'un général en chef.

Art. 51.

No contribution shall be collected except under a written order, and on the responsibility of a General in command.

Il ne sera procédé, autant que possible, à cette perception que d'après les règles de l'assiette et de la répartition des impôts en vigueur.

The collection of the said contribution shall only be effected in accordance, as far as is possible, with the legal basis and assessment of taxes in force at the time.

Pour toute contribution, un reçu sera délivré aux contribuables.

For every contribution a receipt shall be given to the contributors.

Art. 52.

Des réquisitions en nature et des services ne pourront être réclamés des communes ou des habitants que pour les besoins de l'armée d'occupation. Ils seront en rapport avec les ressources du pays et de telle nature qu'ils n'impliquent pas pour les populations l'obligation de prendre part aux opérations de la guerre contre leur patrie.

Art. 52.

Requisitions in kind and services shall not be demanded from local authorities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

Ces réquisitions et ces services ne seront réclamés qu'avec l'autorisation du commandant dans la localité occupée.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Les prestations en nature seront, autant que possible, payées au comptant; sinon, elles seront constatées par des reçus, et le paiement des sommes dues sera effectué le plus tôt possible.

Contributions in kind shall as far as possible be paid for in ready money; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.

Art. 53.

L'armée qui occupe un territoire ne pourra saisir que le numéraire, les fonds, et les valeurs exigibles appartenant en propre à l'État, les dépôts d'armes, moyens de transport, magasins, et approvisionnements, et, en général, toute propriété mobilière de l'État de nature à servir aux opérations de la guerre.

Art. 53.

An army of occupation shall only take possession of cash, funds, and realizable securities which are strictly the property of the State, depôts of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations.

Tous les moyens affectés sur terre, sur mer, et dans les airs à la transmission des nouvelles, au transport des personnes ou des choses, en dehors des cas régis par le droit maritime, les

Except in cases governed by naval law, all appliances adapted for the transmission of news, or for the transport of persons or goods, whether on land, at sea, or in the air, depôts of

dépôts d'armes et, en général, toute espèce de munitions de guerre, peuvent être saisis, même s'ils appartiennent à des personnes privées, mais devront être restitués et les indemnités seront réglées à la paix.

Art. 54.

Les câbles sous-marins reliant un territoire occupé à un territoire neutre ne seront saisis ou détruits que dans le cas d'une nécessité absolue. Ils devront également être restitués et les indemnités seront réglées à la paix.

Art. 55.

L'État occupant ne se considérera que comme administrateur et usufruitier des édifices publics, immeubles, forêts, et exploitations agricoles appartenant à l'État ennemi et se trouvant dans le pays occupé. Il devra sauvegarder le fonds de ces propriétés et les administrer conformément aux règles de l'usufruit.

Art. 56.

Les biens des communes, ceux des établissements consacrés aux cultes, à la charité et à l'instruction, aux arts et aux sciences, même appartenant à l'État, seront traités comme la propriété privée.

Toute saisie, destruction, ou dégradation intentionnelle de semblables établissements, de monuments historiques, d'œuvres d'art et de science, est interdite et doit être poursuivie.

arms, and, in general, all kinds of war material may be seized, even if they belong to private individuals, but they must be restored at the conclusion of peace, and indemnities must be paid for them.

Art. 54.

Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. They also must be restored at the conclusion of peace, and indemnities paid for them.

Art. 55.

The occupying State shall be regarded only as administrator and usufructuary of public buildings, landed property, forests and agricultural undertakings belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of such properties, and administer them in accordance with the rules of usufruct.

Art. 56.

The property of local authorities, as well as that of institutions dedicated to public worship, charity, education, and to science and art, even when State property, shall be treated as private property.

Any seizure or destruction of, or wilful damage to, institutions of this character, historic monuments and works of science and art, is forbidden, and should be made the subject of legal proceedings.

This Convention was signed at The Hague by the Plenipotentiaries of 42 States.

The Ratifications of the following States have up to the present been deposited.

Great Britain.
Austria-Hungary.
Bolivia.
Denmark.
Germany (a).
Haiti.
Mexico.
Netherlands.

Salvador.
Sweden.
United States.
Guatemala.
Panama.
Japan.
Roumania.
Cuba.

Portugal.
Belgium.
France.
Luxemburg.
Norway.
Russia (a).
Siam.
Switzerland.
Italy.

The following Accession has been notified :—

Nicaragua.

(a) With reserve of art. 44 of the Regulations annexed to the Convention.

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APPENDIX 7.

INTERNATIONAL CONVENTION CONCERNING THE RIGHTS AND DUTIES OF
NEUTRAL POWERS AND PERSONS IN WAR ON LAND.*Signed at The Hague, 18th October, 1907.*

[Not yet ratified by Great Britain (a).]

(Translation.)

*Convention concernant les Droits et les
Devoirs des Puissances et des Per-
sonnes Neutres en cas de Guerre sur
Terre.**Convention respecting the Rights and
Duties of Neutral Powers and Per-
sons in War on Land.*

Sa Majesté le Roi du Royaume-Uni
de Grande-Bretagne et d'Irlande et
des Territoires Britanniques au delà
des Mers, Empereur des Indes;

His Majesty the King of the United
Kingdom of Great Britain and Ireland
and of the British Dominions beyond
the Seas, Emperor of India;

[Here follows a list of the Sovereigns and heads of State who sent Pleni-
potentiaries.]

En vue de mieux préciser les droits
et les devoirs des Puissances neutres
en cas de guerre sur terre et de régler
la situation des belligérants réfugiés
en territoire neutre;

With the view of laying down more
clearly the rights and duties of neutral
Powers in case of war on land and of
regulating the position of belligerents
who have taken refuge in neutral
territory;

Désirant également définir la qualité
de neutre en attendant qu'il soit pos-
sible de régler dans son ensemble la
situation des particuliers neutres dans
leurs rapports avec les belligérants;

Being likewise desirous of defining
the meaning of the term "neutral,"
pending the possibility of settling, in
its entirety, the position of neutral
persons in their relations with bel-
ligerents;

Ont résolu de conclure une Conven-
tion à cet effet et ont, en conséquence,
nommé pour leurs Plénipotentiaires,
savoir:

Have resolved to conclude a Con-
vention to this effect, and have, in
consequence, appointed as their Pleni-
potentiaries, that is to say:

[Here follow the names of the Plenipotentiaries.]

Lesquels, après avoir déposé leurs
pleins pouvoirs, trouvés en bonne et
due forme, sont convenus des dis-
positions suivantes:—

Who, after having deposited their
full powers, found to be in good and
due form, have agreed upon the
following provisions:—

CHAPITRE I.—*Des Droits et des Devoirs
des Puissances Neutres.*CHAPTER I.—*The Rights and Duties of
Neutral Powers.*

Art. 1.

Art. 1.

Le territoire des Puissances neutres
est inviolable.

The territory of neutral Powers is
inviolable.

Art. 2.

Art. 2.

Il est interdit aux belligérants de
faire passer à travers le territoire
d'une Puissance neutre des troupes ou
des convois, soit de munitions, soit
d'approvisionnements.

Belligerents are forbidden to move
troops or convoys, whether of mun-
itions of war or of supplies, across the
territory of a neutral Power.

(a) See para. 466, footnote.

Art. 3.

Il est également interdit aux belligérants :

- (a.) D'installer sur le territoire d'une Puissance neutre une station radiotélégraphique ou tout appareil destiné à servir comme moyen de communication avec des forces belligérantes sur terre ou sur mer;
- (b.) D'utiliser toute installation de ce genre établie par eux avant la guerre sur le territoire de la Puissance neutre dans un but exclusivement militaire, et qui n'a pas été ouverte au service de la correspondance publique.

Art. 4.

Des corps de combattants ne peuvent être formés, ni des bureaux d'enrôlement ouverts, sur le territoire d'une Puissance neutre au profit des belligérants.

Art. 5.

Une Puissance neutre ne doit tolérer sur son territoire aucun des actes visés par les Articles 2 à 4.

Elle n'est tenue de punir des actes contraires à la neutralité que si ces actes ont été commis sur son propre territoire.

Art. 6.

La responsabilité d'une Puissance neutre n'est pas engagée par le fait que des individus passent isolément la frontière pour se mettre au service de l'une des belligérants.

Art. 7.

Une Puissance neutre n'est pas tenue d'empêcher l'exportation ou le transit, pour le compte de l'un ou de l'autre des belligérants, d'armes, de munitions, et, en général, de tout ce qui peut être utile à une armée ou à une flotte.

Art. 8.

Une Puissance neutre n'est pas tenue d'interdire ou de restreindre l'usage, pour les belligérants, des câbles télégraphiques ou téléphoniques, ainsi que des appareils de télégraphie sans fil, qui sont, soit sa propriété soit celle de Compagnies ou de particuliers.

Art. 9.

Toutes mesures restrictives ou prohibitives prises par une Puissance neutre à l'égard des matières visées

Art. 3.

Belligerents are likewise forbidden to :

- (a.) Erect on the territory of a neutral Power a wireless telegraphy station or any apparatus for the purpose of communicating with belligerent forces on land or sea;
- (b.) Use any installation of this kind established by them for purely military purposes on the territory of a neutral Power before the war, and not previously opened for the service of public messages.

Art. 4.

Corps of combatants must not be formed, nor recruiting agencies opened, on the territory of a neutral Power, to assist the belligerents.

Art. 5.

A neutral Power must not allow any of the acts referred to in Articles 2 to 4 to occur on its territory.

It is not called upon to punish acts in violation of neutrality unless such acts have been committed on its own territory.

Art. 6.

The responsibility of a neutral Power is not involved by the mere fact that persons cross the frontier individually in order to offer their services to one of the belligerents.

Art. 7.

A neutral Power is not bound to prevent the export or transit, for either belligerent, of arms, munitions of war, or, in general, of anything which could be of use to an army or fleet.

Art. 8.

A neutral Power is not bound to forbid or restrict the use on behalf of belligerents of telegraph or telephone cables, or of wireless telegraphy apparatus, belonging to it or to Companies or to private individuals.

Art. 9.

A neutral Power must apply impartially to the belligerents every restriction or prohibition which it may

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La Puissance neutre veillera au respect de la même obligation par les Compagnies ou particuliers propriétaires de câbles télégraphiques ou téléphoniques ou d'appareils de télégraphie sans fil.

Art. 10.

Ne peut être considéré comme un acte hostile le fait, par une Puissance neutre, de repousser, même par la force, les atteintes à sa neutralité.

enact in regard to the matters referred to in Articles 7 and 8.

The neutral Power shall see that the above obligation is observed by Companies or private owners of telegraph or telephone cables or wireless telegraphy apparatus.

Art. 10.

The fact of a neutral Power resisting, even by force, attempts to violate its neutrality cannot be regarded as a hostile act.

CHAPITRE II.—Des Belligérants internés et des Blessés soignés chez les Neutres.

Art. 11.

La Puissance neutre qui reçoit sur son territoire des troupes appartenant aux armées belligérantes, les internera, autant que possible, loin du théâtre de la guerre.

Elle pourra les garder dans des camps, et même les enfermer dans des forteresses ou dans des lieux appropriés à cet effet.

Elle décidera si les officiers peuvent être laissés libres en prenant l'engagement sur parole de ne pas quitter le territoire neutre sans autorisation.

Art. 12.

A défaut de convention spéciale, la Puissance neutre fournira aux internés les vivres, les habillements, et les secours commandés par l'humanité.

Bonification sera faite, à la paix, des frais occasionnés par l'internement.

Art. 13.

La Puissance neutre qui reçoit des prisonniers de guerre évadés les laissera en liberté. Si elle tolère leur séjour sur son territoire, elle peut leur assigner une résidence.

La même disposition est applicable aux prisonniers de guerre amenés par des troupes se réfugiant sur le territoire de la Puissance neutre.

Art. 14.

Une Puissance neutre pourra autoriser le passage sur (a) son territoire des blessés ou malades appartenant aux armées belligérantes, sous la

CHAPTER II.—Internment of Belligerents and Care of the Wounded in Neutral Territory.

Art. 11.

A neutral Power which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war.

It may keep them in camps and may even confine them in fortresses or in places set apart for the purpose.

It shall decide whether officers may be left free on giving their parole not to leave the neutral territory without permission.

Art. 12.

In default of special Agreement, the neutral Power shall supply the interned with the food, clothing, and relief which the dictates of humanity prescribe.

At the conclusion of peace the expenses caused by the internment shall be made good.

Art. 13.

A neutral Power which receives escaped prisoners of war shall leave them at liberty. If it allows them to remain in its territory it may assign them a place of residence.

The same rule applies to prisoners of war brought by troops taking refuge in the territory of a neutral Power.

Art. 14.

A neutral Power may authorize the passage into (a) its territory of the sick and wounded belonging to the belligerent armies on condition that

(a) See para. 493, footnote, where it is suggested that "through" is a better translation than "into."

réserve que les trains qui les amèneront ne transporteront ni personnel, ni matériel de guerre. En pareil cas, la Puissance neutre est tenue de prendre les mesures de sûreté et de contrôle nécessaires à cet effet.

Les blessés ou malades amenés dans ces conditions sur le territoire neutre par un des belligérants, et qui appartiendraient à la partie adverse, devront être gardés par la Puissance neutre de manière qu'ils ne puissent de nouveau prendre part aux opérations de la guerre. Cette Puissance aura les mêmes devoirs quant aux blessés ou malades de l'autre armée qui lui seraient confiés.

Art. 15.

La Convention de Genève s'applique aux malades et aux blessés internés sur territoire neutre.

CHAPITRE III.—*Des personnes Neutres.*

Art. 16 (a).

Sont considérés comme neutres les nationaux d'un État qui ne prend pas part à la guerre.

Art. 17 (a).

Un neutre ne peut pas se prévaloir de sa neutralité :

- (a.) S'il commet des actes hostiles contre un belligérant ;
- (b.) S'il commet des actes en faveur d'un belligérant, notamment s'il prend volontairement du service dans les rangs de la force armée de l'une des parties.

En pareil cas, le neutre ne sera pas traité plus rigoureusement par le belligérant contre lequel il s'est départi de la neutralité que ne pourrait l'être, à raison du même fait, un national de l'autre État belligérant.

Art. 18 (a).

Ne seront pas considérés comme actes commis en faveur d'un des belligérants, dans le sens de l'Article 17, lettre (b) :

- (a.) Les fournitures faites ou les emprunts consentis à l'un des belligérants, pourvu que le fournisseur ou le prêteur n'habite ni le territoire de

the trains or other methods of transport by which they are conveyed shall carry neither combatants nor war material. In such a case, the neutral Power is bound to take whatever measures of safety and control are necessary for the purpose.

The sick and wounded of one belligerent brought under these conditions into neutral territory by the other belligerent must be so kept by the neutral Power as to ensure their taking no further part in the military operations. The same duty shall devolve on the neutral State with regard to the sick and wounded of the other army who may be committed to its care.

Art. 15.

The Geneva Convention applies to the sick and wounded who are interned in neutral territory.

CHAPTER III.—*Neutral Persons.*

Art. 16 (a).

The subjects or citizens of a State which is not taking part in the war are deemed neutrals.

Art. 17 (a).

A neutral cannot claim the benefit of his neutrality :

- (a.) If he commits hostile acts against a belligerent ;
- (b.) If he commits acts in favour of a belligerent, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties.

In such a case, the neutral shall not be more severely treated by the belligerent as against whom he has abandoned his neutrality than a subject or citizen of the other belligerent State could be for the same act.

Art. 18 (a).

The following shall not be considered as acts committed in favour of one belligerent within the meaning of Article 17, letter (b) :

- (a.) The furnishing of supplies or the making of loans to one of the belligerents, provided that the person so doing neither lives in the territory of the

(a) Great Britain signed this Convention under reserve of arts. 16, 17 and 18 see para. 468, note.

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l'autre partie, ni le territoire occupé par elle, et que les fournitures ne proviennent pas de ces territoires;

(b.) Les services rendus en matière de police ou d'administration civile.

other party nor in territory occupied by it, and that the supplies do not come from such territory;

(b.) Services rendered in matters of police or civil administration.

CHAPITRE IV.—*Du Matériel des Chemins de Fer.*

Art. 19.

Le matériel des chemins de fer provenant du territoire de Puissances neutres, qu'il appartienne à ces Puissances ou à des sociétés ou personnes privées, et reconnaissable comme tel, ne pourra être réquisitionné et utilisé par un belligérant que dans le cas et la mesure où l'exige une impérieuse nécessité. Il sera renvoyé aussitôt que possible dans le pays d'origine.

La Puissance neutre pourra de même, en cas de nécessité, retenir et utiliser, jusqu'à due concurrence, le matériel provenant du territoire de la Puissance belligérante.

Une indemnité sera payée de part et d'autre en proportion du matériel utilisé et de la durée de l'utilisation.

CHAPTER IV.—*Railway Material.*

Art. 19.

Railway material coming from the territory of neutral Powers, whether it be the property of the said Powers or of Companies or private persons, and recognizable as such, shall not be requisitioned or utilized by a belligerent except in so far as is absolutely necessary. It shall be sent back as soon as possible to the country of origin.

A neutral Power may likewise, in case of necessity, retain and utilize to a corresponding extent railway material coming from the territory of the belligerent Power.

Compensation shall be paid on either side in proportion to the material used, and to the period of usage.

CHAPITRE V.—*Dispositions Finales.*

Art. 20.

Les dispositions de la présente Convention ne sont applicables qu'entre les Puissances Contractantes et seulement si les belligérants sont tous parties à la Convention.

Art. 21.

La présente Convention sera ratifiée aussitôt que possible.

Les ratifications seront déposées à La Haye.

Le premier dépôt de ratifications sera constaté par un procès-verbal signé par les Représentants des Puissances qui y prennent part et par le Ministre des Affaires Étrangères des Pays-Bas.

Les dépôts ultérieurs de ratifications se feront au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et accompagnée de l'instrument de ratification.

Copie certifiée conforme du procès-verbal relatif au premier dépôt de ratifications, des notifications mentionnées à l'alinéa précédent, ainsi que des instruments de ratification sera immédiatement remise par les soins du Gouvernement des Pays-Bas et par

CHAPTER V.—*Final Provisions.*

Art. 20.

The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

Art. 21.

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification shall be immediately sent by the Netherland Government through the diplomatic

la voie diplomatique aux Puissances conviées à la Deuxième Conférence de la Paix, ainsi qu'aux autres Puissances qui auront adhéré à la Convention. Dans les cas visés par l'alinéa précédent, le dit Gouvernement leur fera connaître en même temps la date à laquelle il a reçu la notification.

Art. 22.

Les Puissances non-Signataires sont admises à adhérer à la présente Convention.

La Puissance qui désire adhérer notifie par écrit son intention au Gouvernement des Pays-Bas en lui transmettant l'acte d'adhésion, qui sera déposé dans les archives du dit Gouvernement.

Ce Gouvernement transmettra immédiatement à toutes les autres Puissances copie certifiée conforme de la notification ainsi que de l'acte d'adhésion, en indiquant la date à laquelle il a reçu la notification.

Art. 23.

La présente Convention produira effet, pour les Puissances qui auront participé au premier dépôt de ratifications, soixante jours après la date du procès-verbal de ce dépôt et, pour les Puissances qui ratifieront ultérieurement ou qui adhéreront, soixante jours après que la notification de leur ratification ou de leur adhésion au a été reçue par le Gouvernement des Pays-Bas.

Art. 24.

S'il arrivait qu'une des Puissances Contractantes voulût dénoncer la présente Convention, la dénonciation sera notifiée par écrit au Gouvernement des Pays-Bas, qui communiquera immédiatement copie certifiée conforme de la notification à toutes les autres Puissances, en leur faisant savoir la date à laquelle il l'a reçue.

La dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée et un an après que la notification en sera parvenue au Gouvernement des Pays-Bas.

Art. 25.

Un registre tenu par le Ministère des Affaires Étrangères des Pays-Bas indiquera la date du dépôt des ratifications effectué en vertu de l'Article 21, alinéas 3 et 4, ainsi que la date à laquelle auront été reçues les notifications d'adhésion (Article 22, alinéa 2) ou de dénonciation (Article 24, alinéa 1).

Chaque Puissance Contractante est admise à prendre connaissance de ce

channel, to the Powers invited to the Second Peace Conference as well as to the other Powers which have acceded to the Convention. The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

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Art. 22.

Non-Signatory Powers may accede to the present Convention.

A Power which desires to accede notifies its intention in writing to the Netherland Government, forwarding to it the act of accession, which shall be deposited in the archives of the said Government.

The said Government shall immediately forward to all the other Powers a duly certified copy of the notification as well as of the act of accession, mentioning the date on which it received the notification.

Art. 23.

The present Convention shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently or which shall accede, sixty days after the notification of their ratification or of their accession has been received by the Netherland Government.

Art. 24.

In the event of one of the Contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers, informing them of the date on which it was received.

The denunciation shall only operate in respect of the denouncing Power, and only on the expiry of one year after the notification has reached the Netherland Government.

Art. 25.

A register kept by the Netherland Ministry of Foreign Affairs shall record the date of the deposit of ratifications effected in virtue of Article 21, paragraphs 3 and 4, as well as the date on which the notifications of accession (Article 22, paragraph 2) or of denunciation (Article 24, paragraph 1) have been received.

Each Contracting Power is entitled to have access to this register and to

Ch. XIV. registre et à en demander des extraits certifiés conformes.

En foi de quoi les Plénipotentiaires ont revêtu la présente Convention de leurs Signatures.

Fait à La Haye, le 18 Octobre, 1907, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances qui ont été conviées à la Deuxième Conférence de la Paix.

be supplied with duly certified extracts from it.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and of which duly certified copies shall be sent, through the diplomatic channel, to the Powers invited to the Second Peace Conference.

This Convention was signed at The Hague by the Plenipotentiaries of forty-two States.

The Ratifications of the following States have up to the present been deposited :—

Austria-Hungary.
Belgium.
Bolivia.
Denmark.
Germany.
Haiti.
Mexico.
Netherlands.

Norway.
Russia.
Salvador.
Siam.
Sweden.
Switzerland.
United States.
Japan.

Panama.
Roumania.
Cuba.
France.
Luxemburg.
Guatemala.
Portugal.
Spain.

The following Accessions have been notified :—

China.
Nicaragua.

Italy.

APPENDIX 8.

INTERNATIONAL CONVENTION RESPECTING BOMBARDMENTS BY NAVAL FORCES IN TIME OF WAR.

Signed at The Hague, 18th October, 1907.

[*British Ratification deposited at The Hague, 27th November, 1909.*]

(Translation.)

Convention concernant le Bombardement par des Forces Navales en Temps de Guerre.

Convention respecting Bombardments by Naval Forces in Time of War.

Sa Majesté le Roi du Royaume-Uni de Grande-Bretagne et d'Irlande et des Territoires Britannique au delà des Mers, Empereur des Indes ;

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India ;

[Here follows the list of other Sovereigns and heads of State who sent Plenipotentiaries.]

Animés du désir de réaliser le vœu exprimé par la Première Conférence de la Paix, concernant le bombardement, par des forces navales, de ports, villes, et villages non défendus ;

Considérant qu'il importe de soumettre les bombardements par des forces navales à des dispositions générales qui garantissent les droits des habitants et assurent la conservation des principaux édifices, en étendant à cette opération de guerre,

Animated by the desire to realize the wish expressed by the First Peace Conference respecting the bombardment by naval forces of undefended ports, towns, and villages ;

Whereas it is expedient that bombardments by naval forces should be subject to rules of general application to safeguard the rights of the inhabitants and to assure the preservation of the more important buildings, by applying as far as possible to this

dans la mesure du possible, les principes du Règlement de 1899 sur les Lois et Coutumes de la Guerre sur Terre ;

S'inspirant ainsi du désir de servir les intérêts de l'humanité et de diminuer les rigueurs et les désastres de la guerre ;

Ont résolu de conclure une Convention à cet effet, et ont, en conséquence, nommé pour leurs Plénipotentiaires, savoir :

[Here follow the names of the Plenipotentiaries.]

Lesquels, après avoir déposé leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes :—

CHAPITRE I.—*Du Bombardement des Ports, Villes, Villages, Habitations, ou Bâtiments non défendus.*

Art. 1 (a).

Il est interdit de bombarder, par des forces navales, des ports, villes, villages, habitations, ou bâtiments qui ne sont pas défendus.

Une localité ne peut pas être bombardée à raison du seul fait que, devant son port, se trouvent mouillées des mines sous-marines automatiques de contact.

Art. 2.

Toutefois, ne sont pas compris dans cette interdiction les ouvrages militaires, établissements militaires ou navals, dépôts d'armes ou de matériel de guerre, ateliers et installations propres à être utilisés pour les besoins de la flotte ou de l'armée ennemies, et les navires de guerre se trouvant dans le port. Le commandant d'une force navale pourra, après sommation avec délai raisonnable, les détruire par le canon, si tout autre moyen est impossible et lorsque les autorités locales n'auront pas procédé à cette destruction dans le délai fixé.

Il n'encourt aucune responsabilité dans ce cas pour les dommages involontaires qui pourraient être occasionnés par le bombardement.

Si des nécessités militaires, exigeant une action immédiate, ne permettaient pas d'accorder de délai, il reste entendu que l'interdiction de bombarder la ville non défendue subsiste comme dans le cas énoncé dans l'alinéa 1^{er}, et que le commandant prendra toutes les dispositions voulues pour qu'il en résulte pour cette ville le moins d'inconvénients possible.

operation of war the principles of the Regulations of 1899 respecting the Laws and Customs of Land War ; and

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Actuated, accordingly, by the desire to serve the interests of humanity and to diminish the severity and disasters of war ;

Have resolved to conclude a Convention to this effect, and have, for this purpose, appointed as their Plenipotentiaries, that is to say :

Who, after having deposited their full powers, found to be in good and due form, have agreed upon the following provisions :—

CHAPTER I.—*Bombardment of Undefended Ports, Towns, Villages, Dwellings, or Buildings.*

Art. 1 (a).

The bombardment by naval forces of undefended ports, towns, villages, dwellings, or buildings is forbidden.

A place may not be bombarded solely on the ground that automatic submarine contact mines are anchored off the harbour.

Art. 2.

Military works, military or naval establishments, depôts of arms or war material, workshops or plant which could be utilized for the needs of the hostile fleet or army, and ships of war in the harbour, are not, however, included in this prohibition. The commander of a naval force may destroy them with artillery, after a summons followed by a reasonable interval of time, if all other means are impossible, and when the local authorities have not themselves destroyed them within the time fixed.

The Commander incurs no responsibility for any unavoidable damage which may be caused by a bombardment under such circumstances.

If for military reasons immediate action is necessary, and no delay can be allowed to the enemy, it is nevertheless understood that the prohibition to bombard the undefended town holds good, as in the case given in the first paragraph, and that the commander shall take all due measures in order that the town may suffer as little harm as possible.

(a) The 2nd paragraph of this article has not been accepted by Great Britain, France and Germany.

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Art. 3.

Il peut, après notification expresse, être procédé au bombardement des ports, villes, villages, habitations, ou bâtiments non défendus, si les autorités locales, mises en demeure par une sommation formelle, refusent d'obtempérer à des réquisitions de vivres ou d'approvisionnements nécessaires au besoin présent de la force navale qui se trouve devant la localité.

Ces réquisitions seront en rapport avec les ressources de la localité. Elles ne seront réclamées qu'avec l'autorisation du commandant de la dite force navale, et elles seront, autant que possible, payées au comptant; sinon elles seront constatées par des reçus.

Art. 4.

Est interdit le bombardement, pour le non-paiement des contributions en argent, des ports, villes, villages, habitations, ou bâtiments non défendus.

 CHAPITRE II.—*Dispositions Générales.*

Art. 5.

Dans le bombardement par des forces navales, toutes les mesures nécessaires doivent être prises par le commandant pour épargner, autant que possible, les édifices consacrés aux cultes, aux arts, aux sciences, et à la bienfaisance, les monuments historiques, les hôpitaux et les lieux de rassemblement de malades ou de blessés, à condition qu'ils ne soient pas employés en même temps à un but militaire.

Le devoir des habitants est de désigner ces monuments, ces édifices, ou lieux de rassemblement, par des signes visibles, qui consisteront en grands panneaux rectangulaires rigides, partagés, suivant une des diagonales, en deux triangles de couleur, noire en haut et blanche en bas.

Art. 6.

Sauf le cas où les exigences militaires ne le permettraient pas, le commandant de la force navale assaillante doit, avant d'entreprendre le bombardement, faire tout ce qui dépend de lui pour avertir les autorités.

Art. 7.

Il est interdit de livrer au pillage une ville ou localité même prise d'assaut.

Art. 3.

After due notice has been given, the bombardment of undefended ports, towns, villages, dwellings, or buildings may be commenced, if the local authorities, on a formal summons being made to them, decline to comply with requisitions for provisions or supplies necessary for the immediate use of the naval force before the place in question.

Such requisitions shall be proportional to the resources of the place. They shall only be demanded in the name of the commander of the said naval force, and they shall, as far as possible, be paid for in ready money; if not, receipts shall be given.

Art. 4.

The bombardment of undefended ports, towns, villages, dwellings, or buildings, on account of failure to pay money contributions, is forbidden.

 CHAPTER II.—*General Provisions.*

Art. 5.

In bombardments by naval forces all necessary steps must be taken by the commander to spare as far as possible buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick or wounded are collected, provided that they are not used at the time for military purposes.

It is the duty of the inhabitants to indicate such monuments, edifices, or places by visible signs, which shall consist of large stiff rectangular panels divided diagonally into two painted triangular portions, the upper portion black, the lower portion white.

Art. 6.

Unless military exigencies render it impossible, the officer in command of an attacking naval force must, before commencing the bombardment, do all in his power to warn the authorities.

Art. 7.

The giving over to pillage of a town or place, even when taken by assault, is forbidden.

CHAPITRE III.—*Dispositions Finales.*

Art. 8.

Les dispositions de la présente Convention ne sont applicables qu'entre les Puissances Contractantes et seulement si les belligérants sont tous parties à la Convention.

Art. 9.

La présente Convention sera ratifiée aussitôt que possible.
Les ratifications seront déposées à La Haye.

Le premier dépôt de ratifications sera constaté par un procès-verbal signé par les Représentants des Puissances qui y prennent part et par le Ministre des Affaires Étrangères des Pays-Bas.

Les dépôts ultérieurs de ratifications se feront au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et accompagnée de l'instrument de ratification.

Copie certifiée conforme du procès-verbal relatif au premier dépôt de ratifications, des notifications mentionnées à l'alinéa précédent, ainsi que des instruments de ratification, sera immédiatement remise, par les soins du Gouvernement des Pays-Bas et par la voie diplomatique, aux Puissances conviées à la Deuxième Conférence de la Paix, ainsi qu'aux autres Puissances qui auront adhéré à la Convention. Dans les cas visés par l'alinéa précédent, le dit Gouvernement leur fera connaître en même temps la date à laquelle il a reçu la notification.

Art. 10.

Les Puissances non-Signataires sont admises à adhérer à la présente Convention.

La Puissance qui désire adhérer notifie par écrit son intention au Gouvernement des Pays-Bas en lui transmettant l'acte d'adhésion, qui sera déposé dans les archives du dit Gouvernement.

Ce Gouvernement transmettra immédiatement à toutes les autres Puissances copie certifiée conforme de la notification ainsi que de l'acte d'adhésion, en indiquant la date à laquelle il a reçu la notification.

Art. 11.

La présente Convention produira effet pour les Puissances qui auront participé au premier dépôt de ratifications, soixante jours après la date du procès-verbal de ce dépôt et, pour les Puissances qui ratifieront ultérieurement ou qui adhéreront, soixante jours après la notification de leur ratifi-

(M.L.)

CHAPTER III.—*Final Provisions.*

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Art. 8.

The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

Art. 9.

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have acceded to the Convention. The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

Art. 10.

Non-Signatory Powers may accede to the present Convention.

A Power which desires to accede notifies its intention in writing to the Netherland Government, forwarding to it the act of accession, which shall be deposited in the archives of the said Government.

The said Government shall immediately forward to all the other Powers a duly certified copy of the notification, as well as of the act of accession, mentioning the date on which it received the notification.

Art. 11.

The present Convention shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently or which shall accede, sixty days after the notification

Ch. XIV. cation ou de leur adhésion aura été reçue par le Gouvernement des Pays-Bas.

Art. 12.

S'il arrivait qu'une des Puissances Contractantes voulût dénoncer la présente Convention, la dénonciation sera notifiée par écrit au Gouvernement des Pays-Bas, qui communiquera immédiatement copie certifiée conforme de la notification à toutes les autres Puissances en leur faisant savoir la date à laquelle il l'a reçue.

La dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée et un an après que la notification en sera parvenue au Gouvernement des Pays-Bas.

Art. 18.

Un registre tenu par le Ministère des Affaires Etrangères des Pays-Bas indiquera la date du dépôt de ratifications effectué en vertu de l'Article 9, alinéas 3 et 4, ainsi que la date à laquelle auront été reçues les notifications d'adhésion (Article 10, alinéa 2) ou de dénonciation (Article 12, alinéa 1).

Chaque Puissance Contractante est admise à prendre connaissance de ce registre et à en demander des extraits certifiés conformes.

En foi de quoi les Plénipotentiaires ont revêtu la présente Convention de leurs signatures.

Fait à La Haye, le 18 Octobre, 1907, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas, et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances qui ont été conviées à la Deuxième Conférence de la Paix.

This Convention was signed at The Hague by the Plenipotentiaries of forty-two States.

The Ratifications of the following States have, up to the present, been deposited :—

Great Britain (a).	Sweden.	Guatemala.
Germany (a).	Bolivia.	Portugal.
United States.	Salvador.	France (a).
Austria-Hungary.	Haiti.	Luxemburg.
Denmark.	Panama.	Belgium.
Mexico.	Japan.	Norway.
Netherlands.	Roumania.	Siam.
Russia.	Cuba.	Switzerland.

The following Accessions have been notified :—

China.	Nicaragua.	Spain.
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of their ratification or of their accession has been received by the Netherland Government.

Art. 12.

In the event of one of the Contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers informing them of the date on which it was received.

The denunciation shall only operate in respect of the denouncing Power, and only on the expiry of one year after the notification has reached the Netherland Government.

Art. 18.

A register kept by the Netherland Ministry for Foreign Affairs shall record the date of the deposit of ratifications effected in virtue of Article 9, paragraphs 3 and 4, as well as the date on which the notifications of accession (Article 10, paragraph 2) or of denunciation (Article 12, paragraph 1) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and of which duly certified copies shall be sent, through the diplomatic channel, to the Powers invited to the Second Peace Conference.

(a) Under reserve of Article 1, para. 2.

APPENDIX 9.

INTERNATIONAL DECLARATION PROHIBITING THE DISCHARGE OF PROJECTILES AND EXPLOSIVES FROM BALLOONS.

Signed at The Hague, 18th October, 1907.

[British Ratification deposited at The Hague, 27th November, 1909.]

(Translation.)

*Déclaration relative à l'Interdiction de lancer des Projectiles et des Explosifs du Haut de Ballons.**Declaration prohibiting the Discharge of Projectiles and Explosives from Balloons.*

LES Soussignés, Plénipotentiaires des Puissances conviées à la Deuxième Conférence Internationale de la Paix à La Haye, dûment autorisés à cet effet par leurs Gouvernements, s'inspirant des sentiments qui ont trouvé leur expression dans la Déclaration de Saint-Petersbourg du 29 Novembre (11 Décembre), 1868, et désirant renouveler la Déclaration de la Haye du 29 Juillet, 1899, arrivée à expiration,

Déclarent :

Les Puissances Contractantes consentent, pour une période allant jusqu'à la fin de la Troisième Conférence de la Paix, à l'interdiction de lancer des projectiles et des explosifs du haut de ballons ou par d'autres modes analogues nouveaux.

La présente Déclaration n'est obligatoire que pour les Puissances Contractantes, en cas de guerre entre deux ou plusieurs d'entre elles.

Elle cessera d'être obligatoire du moment où, dans une guerre entre des Puissances Contractantes, une Puissance non-Contractante se joindrait à l'un des belligérants.

La présente Déclaration sera ratifiée dans le plus bref délai possible.

Les ratifications seront déposées à La Haye.

Il sera dressé du dépôt des ratifications un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances Contractantes.

Les Puissances non-Signataires pourront adhérer à la présente Déclaration. Elles auront, à cet effet, à faire connaître leur adhésion aux Puissances Contractantes, au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et communiquée par celui-ci à toutes les autres Puissances Contractantes.

S'il arrivait qu'une des Hautes Parties Contractantes dénonçât la présente Déclaration, cette dénonciation ne produirait ses effets qu'un an après la notification faite par écrit au Gouvernement des Pays-Bas et

THE Undersigned, Plenipotentiaries of the Powers invited to the Second International Peace Conference at The Hague, duly authorized to that effect by their Governments, inspired by the sentiments which found expression in the Declaration of St. Petersburg of the 29th November (11th December), 1868, and being desirous of renewing the Declaration of The Hague of the 29th July, 1899, which has now expired,

Declare :

The Contracting Powers agreed to prohibit, for a period extending to the close of the Third Peace Conference, the discharge of projectiles and explosives from balloons or by other new methods of a similar nature.

The present Declaration is only binding on the Contracting Powers in case of war between two or more of them.

It shall cease to be binding from the moment when, in a war between the Contracting Powers, one of the belligerents is joined by a non-Contracting Power.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A Protocol shall be drawn up recording the receipt of the ratifications, of which a duly certified copy shall be sent, through the diplomatic channel to all the Contracting Powers.

Non-Signatory Powers may accede to the present Declaration. To do so, they must make known their accession to the Contracting Powers by means of a written notification, addressed to the Netherland Government, and communicated by it to all the other Contracting Powers.

In the event of one of the High Contracting Parties denouncing the present Declaration, such denunciation shall only operate on the expiry of one year after the notification made in writing to the Netherland Government, and

Ch. XIV. communiqué immédiatement par celui-ci à toutes les autres Puissances Contractantes.

Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi les Plénipotentiaires ont revêtu la présente Déclaration de leurs signatures.

Fait à La Haye, le 18 Octobre, 1907, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas, et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances Contractantes.

forthwith communicated by it to all the other Contracting Powers.

This denunciation shall only operate in respect of the denouncing Power.

In faith whereof the Plenipotentiaries have appended their signatures to the present Declaration.

Done at The Hague, the 18th October, 1907, in a single original, which shall remain deposited in the archives of the Netherland Government, and of which duly certified copies shall be sent, through the diplomatic channel, to the Contracting Powers.

This Convention was signed at The Hague by the Plenipotentiaries of 27 States (a).

The Ratifications of the following States have up to the present been deposited :—

Great Britain.	Salvador.	Luxemburg
United States.	Haiti.	Norway.
China.	Panama.	Siam.
Netherlands.	Portugal.	Switzerland.
Bolivia.	Belgium.	

The following Accession has been notified :—

Nicaragua.

(a) These included those of Great Britain, the United States, and Austria-Hungary, and Turkey. Those of Chile, Denmark, France, Germany, Italy, Japan, Roumania, Russia, Servia, Spain and Sweden did not sign it.

APPENDIX 10.

FORM OF ARMISTICE (No. 1) (c).

Armistice between two opposing Forces.

A.B. authorized by C.D. Commander-in-Chief His Britannic Majesty's Forces in and E.F. authorized by F.H. Commander-in-Chief the troops in agree to the following Articles :—

Art. 1. On publication of this Armistice, hostilities shall cease between the British and forces at all points along the frontier of between

and
Art. 2. The Armistice shall continue until noon on the day of and until such further time as is hereinafter mentioned.

Art. 3. Either side may at any time on or after the said day of give six days' notice of its intention to determine the armistice and the armistice shall be determined at the expiration of such six days. Notice shall be given by writing, stating the intention to determine the armistice, and sent from the headquarters of one army to the headquarters of the other army. In reckoning time for the purpose of the said six days' notice, the day on which the notice is given, at whatever hour the same may be given, shall be reckoned as an entire day, and the armistice shall expire at midnight on the fifth day succeeding the day on which the notice is given.

Art. 4. The lines of demarcation shown on the attached map shall be strictly adhered to during the armistices. The territory lying between the two lines of demarcation shall be strictly neutral, and any advance into it by any member of

(c) This and the two following forms are a revision of those given by Thring.

either army is prohibited except for the purposes of communication between the two armies. Neither army shall extend its line in a direction beyond the points shown as the extremities of their respective lines. Ch. XIV.

Art. 5. Subject to the restrictions mentioned in the 4th art., as respects making an advance into the neutral territory, either army may take measures to strengthen its position, and may receive reinforcements and stores of warlike and other material, and may do any other act not being an act of direct hostility.

Art. 6. During the two days following the day on which this armistice is ratified, burial parties from both armies shall be permitted to visit the field of battle of the instant, for the purpose of burying the dead.

Art. 7. The main road from A. to B. via C. will be used for communication between the Commanders-in-Chief of the two armies.

Art. 8. During the continuance of the armistice, the peaceful inhabitants of the country shall be allowed to pursue their occupations, and to buy from or sell to either army provisions or goods, but any measures consistent with the observance of the articles of the armistice in relation to the neutral territory may be taken by either army to prevent inhabitants, after entering the lines of or obtaining information respecting one army from passing or carrying information to the other army.

Art. 9. This armistice shall come into force immediately on its ratification by the commanders-in-chief of the two armies, and officers shall be despatched with all speed, from the headquarters of each army, to give notice of the armistice at all points along the line.

APPENDIX 11.

FORM OF ARMISTICE (No. 2).

Between Besieging Force and Garrison.

A.B., General, Commander-in-Chief of His Britannic Majesty's Forces now in
and C.D., General, Commander-in-Chief of the Garrison of
agree to the following articles :—

Art. 1. An armistice between the British troops investing and the troops forming the garrison of shall begin at noon on the 15th instant; and shall end at noon on the 25th instant.

Art. 2. White flags shall be hoisted simultaneously at the beginning of the armistice, the one at within the British lines, and the other at Fort

The flags shall be kept flying during the continuance of the armistice, and shall be lowered simultaneously at its conclusion.

Art. 3. Provisions to the extent of rations shall be supplied daily for the use of the garrison by the besiegers on payment of such sums as may be agreed upon as the value thereof by commissioners to be appointed by the above-named Commanders-in-Chief respectively. The provisions shall be delivered to persons authorized to demand the same by the general commanding the garrison, at such times, and in such places in front of the British lines, as may be agreed upon by the above-named Commanders-in-Chief, and shall be conveyed to the garrison by the persons authorized as above stated.

Art. 4. Save in so far as is provided by art. 3, or as may be agreed upon between the above-named Commanders-in-Chief, it is agreed that the garrison shall not attempt to obtain succour, and that no communication whatever shall, during the armistice, take place between the garrison, whether friend or enemy, and a space of around the fortification shall be considered neutral ground, and no person whatever, whether he be a stranger or belonging to the garrison, or to the besieging army, shall be allowed to enter on such space without the permission of the above-named Commanders-in-Chief.

Art. 5. General commanding the garrison, engages on behalf of the garrison not to repair the fortifications, or to undertake any new siege-works, or do any act or thing whatsoever calculated to place the garrison in a better position in regard to its defence; and General on behalf of the British troops, engages not to undertake any siege-works, or to make any hostile movement against the garrison, but it is understood that he is at liberty to obtain fresh supplies of provisions or reinforcements of troops.

APPENDIX 12.

FORM OF SUSPENSION OF ARMS FOR THE BURIAL OF THE DEAD, ETC.

General A.B., commanding the British forces at _____ and General C.D.,
commanding the forces at _____ agree as follows:—

Art. 1. A suspension of arms for the space of three hours, beginning at ten o'clock and ending at one o'clock on this _____ day of _____ is agreed to for the purpose of burying the dead and withdrawing the wounded.

Art. 2. The beginning of the suspension of arms shall be notified by two white flags hoisted simultaneously, the one within the British lines, and the other within _____ lines. The white flags shall continue flying during the suspension of arms, and such flags shall be lowered simultaneously as a signal of the conclusion of the suspension of arms.

Art. 3. All firing shall cease during the suspension of arms.

Art. 4. The British troops shall not, during the suspension of arms, advance beyond the line, and the _____ troops shall not advance beyond the _____ line. The space between the two lines shall be open to all persons engaged in burying the dead, or in attending to the wounded, or on carrying away the dead or the wounded, but to no other persons.

APPENDIX 13.

ARMISTICE AGREED ON BY JAPAN AND RUSSIA AT PORTSMOUTH (U.S.A.)
ON 5TH SEPTEMBER, 1905 (a).

The undersigned plenipotentiaries of Japan and Russia, duly authorized to that effect by their respective governments, have agreed on the following terms of the armistice which will remain in force until the execution of the treaty of peace:—

- (1) A certain distance (zone of demarcation) shall be fixed to separate the front of the armies of the two powers in Manchuria, and also in the Tumen region.
- (2) The naval force of one of the belligerents may not bombard the territory occupied or belonging to the other.
- (3) The taking of maritime prizes will not be interrupted by the armistice.
- (4) During the armistice, no reinforcements may be sent to the theatre of war. Those who are on the way from Japan may not be sent north of Mukden and those on the way from Russia may not be sent south of Harbin.
- (5) The commanders of the military and naval forces will arrange the details of the armistice in accordance with the principles above enunciated.
- (6) The two Governments will issue the order to put this protocol into execution directly after the signature of the treaty of peace.

Signed: Witte.
Rosen.

Signed: Komoura.
Takahura.

The peace was signed 5th September, 1905, at 3.50 p.m.

APPENDIX 14.

PROTOCOL OF THE CONDITIONS OF THE ARMISTICE CONCLUDED IN
MANCHURIA ON 13TH SEPTEMBER, 1905 (b).

Art. 1. Fighting is suspended throughout the extent of Manchuria.

Art. 2. The space between the front lines of the Japanese and Russian armies which are indicated on the maps exchanged with the present protocol constitutes the neutral zone.

- (a) Translated from Ariga, p. 548.
(b) Translated from Ariga, p. 553.

Art. 3. Every person having the least connection with either of the armies is forbidden to enter the neutral zone on any pretext whatsoever. **Ch. XIV.**

Art. 4. The road leading from Shuang-miao-tzu to Sha-ho-tzu is to be employed for communication between the two armies.

Art. 5. The present protocol will come into force on the 16th (Russian style 3rd) September, 1905, at mid-day, and will remain in force until the execution of the treaty of peace, signed at Portsmouth by the plenipotentiaries of the two Powers.

The present protocol is signed by the representatives of the commanders-in-chief of the Japanese and Russian armies in Manchuria, in virtue of the full powers which have been given to them by the said commanders-in-chief.

Done on the road situated close to Sha-ho-tzu the 13th September, 1905, in two texts, Japanese and Russian, each party keeping a Japanese and a Russian text.

Signed: Fukushima,
Major-General, etc.
Oranowski,
Major-General, etc.

APPENDIX 15.

JAPANESE PROJECT FOR THE ARMISTICE IN THE TUMEN REGION (a).

Art. 1. The Japanese and Russian armies in the Tumen region will execute the armistice according to the stipulations of the present convention.

Art. 2. The Japanese army will canton south of the line The positions of the Russian army will be limited to the north of the line The region between these two lines will form the neutral zone.

Art. 3. No troops, patrols or men sent on reconnaissance, nor any individual belonging or attached to the army will be permitted to enter the neutral zone.

Art. 4. No preparations for attack or defence will be made near the line limiting the neutral zone. The necessary preparations for cantoning the troops will not be considered as preparations for attack or defence.

Art. 5. No requisitions of coolies, horses or any other objects will be made in the neutral zone.

Art. 6. The Japanese and Russian armies in the Tumen region will both commence to evacuate their troops beyond the lines indicated in art. 2 on the third day and must have completed the evacuation behind the lines by the seventh day from the signing of the present convention.

Art. 7. Once the convention is drawn up, the commanders of the Japanese and Russian armies will order the troops and the officials under their command to execute the armistice, in such a manner that the order may reach them as soon as possible. They will at the same time notify the commanders of the land and sea forces.

Art. 8. This convention will come in force immediately it has been signed by the plenipotentiaries of the Japanese and Russian armies; it will lapse on the execution of the treaty of peace.

Art. 9. The present convention will be drawn up in two Japanese and two Russian texts, each army keeping a text in each language.

(This project was not agreeable to the Russians and an armistice had not been concluded when the treaty of peace was ratified.)

APPENDIX 16.

SUSPENSION OF ARMS AT THE SIEGE OF BELFORT, 13TH FEBRUARY, 1871 (b).

It has been agreed by the undersigned:—Captain Krafft of the Auxiliary Engineers, and Captain von Schultzen-dorf, General Staff of the besieging army, both furnished with full powers by Colonel Denfert-Rochereau, Commandant of Belfort, and by Lieutenant-General von Treskow, Commandant of the besieging corps.

(a) Translated from Ariga, p. 560.

(b) Translated from *Le défense de Belfort*, pp. 429-30.

Ch. XIV. As follows:—

- (1) Lieutenant-General von Treskow will send a telegram to Versailles to acquaint the Imperial Chancellor Count Bismarck, that Colonel Denfert-Rochereau requires direct instructions from his government as regards the surrender of the fortress.
 - (2) Colonel Denfert-Rochereau will send an officer to Bâle to await the telegraphic instructions from the French Government.
 - (3) Until the return of this officer there will be a suspension of arms between the besieged and besiegers, beginning the 18th February at 11 p.m. Nevertheless the suspension of arms may be denounced at any moment twelve hours before the time intended for the resumption of hostilities.
 - (4) During the suspension of arms the two parties shall remain in their present positions. The limits thus traced shall not be crossed, and, moreover, there shall be no communication on the part of civilians between the fortress and the outside.
 - (5) Colonel Denfert-Rochereau engages to inform Lieutenant-General von Treskow with the least possible delay of the decision he makes after receiving the instructions of the French Government.
- The present convention has been made in duplicate original, one text in German and the other in French.

Signed: Kraft.
 Von Schultzeendorff.
 18th February, 1871.

APPENDIX 17.

THE TERMS OF THE CAPITULATION OF PORT ARTHUR 1904 (c).

Art. I. The military and naval forces of Russia in the fortress and harbour of Port Arthur, as well as the volunteers and the officials, shall all become prisoners.

Art. II. The forts and fortifications of Port Arthur, the warships and other craft, including torpedo craft, the arms, the ammunition, the horses, all and every material for warlike use, shall be handed over as they are to the Japanese Army.

Art. III. When the above two articles are agreed to, the following steps shall be taken by way of guarantee, namely, by noon on the 3rd instant all garrisons shall be withdrawn from fortifications and forts at I-zu-shan, Hsiao-an-tzu-shan, Ta-an-tzu-shan, and all the highlands on the south-east of these, and the said fortifications and forts shall be handed over to the Japanese Army.

Art. IV. Should it be recognized that the Russian military or naval forces destroy or take any other steps to alter the condition of the things enumerated in Art. II and actually existing at the time of the signature of this Agreement, these negotiations shall be broken off and the Japanese army will break off negotiation and resume freedom of action.

Art. V. The officers of the Russian military and naval forces of Port Arthur shall compile and hand to the Japanese army maps showing the arrangement of the defences, the positions of mines and torpedoes or other dangerous objects, as well as lists of the organization of the naval and military forces in Port Arthur, nominal rolls of the military and naval officers, their ranks or grades, similar rolls relating to the warships, lists of the ships of all descriptions and their crews, and tables of the non-combatants, male and female, their nationalities and their occupations.

Art. VI. The arms (including those in the hands of the forces), the ammunition, and all material for war uses (except private property) shall be all left in their present positions. Rules relating to the handing over and receipt of these objects shall be arranged by commissioners from the Russian and Japanese armies.

(c) The original English text, given in Takahashi, pp. 211-13.

Art. VII. The Japanese army, as an honour to the brave defence made by the Russian army, will allow the officers of the Russian military and naval forces and the officials attached to the said forces to retain their swords, together with all privately owned articles directly necessary for daily existence. Further, with regard to the said officers, officials, and volunteers, such of them as solemnly pledge themselves in writing not to bear arms again until the close of the present war, and not to perform any act of whatsoever kind detrimental to the interests of Japan, shall be permitted to return to their country, and one soldier shall be allowed to accompany each officer of the army or navy. These soldiers shall be required to give a similar pledge.

Art. VIII. The disarmed non-commissioned officers and men of the army and navy, as well as of the volunteers, wearing their uniforms, carrying their tents and all privately owned necessities of daily life, shall under the command of their respective officers, assemble at places indicated by the Japanese army. The details of this arrangement will be shown by the commissioners of the Japanese army.

Art. IX. The officials of the sanitary and paymaster's departments of the Russian military and naval forces in Port Arthur shall remain and continue to discharge their duties under the control of the Japanese sanitary and paymaster's departments so long as the Japanese army deems it necessary for ministering and affording sustenance to the sick, the wounded, and the prisoners.

Art. X. Detailed regulations with reference to the management of the non-combatants, the administration of the town, the performance of financial duties, the transfer of documents relating to these matters, and with reference to the carrying out of the Agreement in other respects, shall be entered in an Appendix to this Agreement. Such Appendix (a) shall have the force of the Agreement itself.

Art. XI. Each of the contracting parties shall receive one copy of this Agreement, and it shall become operative from the time of its signature.

APPENDIX 18.

The Duke of Wellington's proclamation on entering France, 22nd June, 1815. Malplaquet.

(Despatches, Vol. VII, p. 159.)

"Il faut donc qu'ils fournissent aux réquisitions qui leur seront faites de la part des personnes autorisées à les faire, en échange des reçus en forme et ordre; qu'ils se tiennent chez paisiblement et qu'ils n'aient aucun correspondance ou communication avec l'ennemi."

The proclamation on entering France, 1st November, 1813, does not go into details; it merely states that peaceful inhabitants would be well treated and their property respected, and that receipts for requisitions would be given.

APPENDIX 19.

GERMAN INSTRUCTIONS.

For the Governor-General of an Occupied Province, 18'

(Official Account, Part I, Vol. II, Appendix LIV.)

1. The Governor-General of any portion of hostile territory in our occupation is charged with full administrative and military power within his sphere of command. While carrying out his duties with strictness, he will as far as possible exercise forbearance towards the country and its inhabitants.

2. The authority of the hostile state within the district assigned to the Governor-General will cease to exist, and will be replaced by the military control of the latter.

(a) A summary of this appendix is given in the note to para. 321.

Ch. XIV. The instructions of the 25th July for the commanders-in-chief of troops occupying the enemy's country will suffice in this respect also for the Governor-General in his exercise of military authority.

The Governor-General will have under his orders all such troops within the district as may not belong to any particular army.

3. In exercising administrative power, the Governor-General will avail himself of the services of the civil commissaries placed under his orders, and through these, of the civil administrative authorities of his district. Should there be no proper civil administrative authorities he will invest persons with the necessary powers.

4. The administrative powers of the Governor-General and his subordinates will be directed in the first place to the levying of all state taxes, to receive those for the treasury of the Governor-General, and to credit such money as may not be employed for purposes in connection therewith to the general military chest.

5. It further devolves upon the Governor-General to carry out the police regulations which are customary in the country, so far as they are in accordance with military interests.

The civil judicial proceedings are to be conducted in accordance with the laws of the country.

6. Especial attention is to be devoted to the security of all communications necessary for the connection of the armies with their base.

7. Powers are delegated to the Governor-General to control the postal, telegraphic, and railway communication of the public, and to stop it, entirely or partially, as may seem best to his judgment.

8. Contributions and requisitions in the occupied district will be ordered by the Governor-General as he may deem fit, or at the application of the Intendant-General of the Army, and will be carried out according to his instructions. The extent of the money grant for supplies within the spheres of command of Governors-General, is to be determined by them after consultation with the Intendant-General.

9. On the 1st and 15th of each month reports are to be transmitted to me as to the progress and results of the administration, and with regard to any special events and measures which may have arisen.

(Signed) WILLIAM.
(Countersigned) COUNT V. BISMARCK.
COUNT V. ROON.

*Headquarters, Pont-à-Mousson,
21st August, 1870.*

See also proclamations and notices issued by the Japanese military authorities in Manchuria. (The Russo-Japanese War. British Officers' Reports, Vol. II, p. 658.)

APPENDIX 20.

MILITARY CONVENTION between the Commander of the 1st French Army and the General-in-chief of the Army of the Swiss Confederation for the entry of the French troops into Switzerland; signed at Les Verrières, 1st Feb., 1871 (a).

The following Convention has been made between General Clinchant, General-in-chief of the 1st French Army, and General Herzog, General-in-chief of the Army of Swiss Confederation:

Art. 1. The French Army demanding to pass into Swiss territory will on entering lay down its arms, equipment and ammunition.

Art. 2. These arms, equipment and ammunition will be restored to France after peace and after the definitive settlement of the expenses occasioned to Switzerland by the sojourn of the French troops.

Art. 3. The artillery material and ammunition will be dealt with as above.

Art. 4. The horses, arms and effects of the officers will remain at their disposal.

(a) Translated from Martens's *Nouveau Recueil général de traités*, Vol. 19, p. 636.

Art. 5. Arrangements will be made later as regards the troop horses.

Art. 6. Supply and baggage wagons, after having deposited their contents, will immediately return to France with their drivers and horses.

Art. 7. The Treasure Chest and post wagons will be handed over with the contents to the Swiss Confederation, which will account for them when the settlement of expenses is taking place.

Art. 8. The execution of these arrangements will take place in the presence of French and Swiss officers nominated for the purpose.

Art. 9. The Confederation reserves the designation of the place of internment for officers and soldiers.

Art. 10. It is the right of the Federal Council to indicate the detailed prescriptions necessary to complete the present Convention.

Done in triplicate at Les Verrières, 1st Feb., 1871.

(Signed) Olinchant.

(Signed) Herzog.

PART II.

THE ARMY ACT, RULES OF PROCEDURE, &c

THE ARMY (ANNUAL) ACT, 1913.

Note.—As pointed out in Ch. II para. 35 the Army Act requires to be brought into force annually by another Act of Parliament, usually known as the Army (Annual) Act. The first three sections of an Army Annual Act are ordinarily in the form shown below, which is taken from the Act of 1913. An Army Annual Act, however, usually contains also *amendments* of the Army Act. These are subsequently incorporated in the text of the Army Act. The amendments made down to 1913 are so incorporated in the text of the Army Act printed below.

An Act to provide, during Twelve Months, for the Discipline and Regulation of the Army.

WHEREAS the raising or keeping of a standing army within the United Kingdom of Great Britain and Ireland in time of peace, unless it be with the consent of Parliament, is against law :

And whereas it is adjudged necessary by His Majesty and this present Parliament that a body of forces should be continued for the safety of the United Kingdom and the defence of the possessions of His Majesty's Crown, and that the whole number of such forces should consist of one hundred and eighty-five thousand six hundred, including those to be employed at the depôts in the United Kingdom of Great Britain and Ireland for the training of recruits for service at home and abroad, but exclusive of the numbers actually serving within His Majesty's Indian possessions :

And whereas it is also judged necessary for the safety of the United Kingdom, and the defence of the possessions of this realm, that a body of Royal Marine forces should be employed in His Majesty's fleet and naval service, under the direction of the Lord High Admiral of the United Kingdom, or the Commissioners for executing the office of Lord High Admiral aforesaid :

And whereas the said marine forces may frequently be quartered or be on shore, or sent to do duty or be on board transport ships or vessels, merchant ships or vessels, or other ships or vessels, or they may be under other circumstances in which they will not be subject to the laws relating to the government of His Majesty's forces by sea :

And whereas no man can be forejudged of life or limb, or subjected in time of peace to any kind of punishment within this realm, by martial law, or in any other manner than by the judgment

of his peers and according to the known and established laws of this realm ; yet nevertheless, it being requisite, for the retaining all the before-mentioned forces, and other persons subject to military law, in their duty, that an exact discipline be observed, and that persons belonging to the said forces who mutiny or stir up sedition, or desert His Majesty's service, or are guilty of crimes and offences to the prejudice of good order and military discipline, be brought to a more exemplary and speedy punishment than the usual forms of the law will allow :

44 & 45 Vict.
c. 58. And whereas the Army Act will expire in the year one thousand nine hundred and thirteen on the following days :

- (a) In the United Kingdom, the Channel Islands, and the Isle of Man, on the thirtieth day of April ; and
- (b) Elsewhere, whether within or without His Majesty's dominions, on the thirty-first day of July :

Be it therefore enacted, &c.

Short title.

1. This Act may be cited as the Army (Annual) Act, 1913.

Army Act
to be in force
for specified
times.

2.—(1) The Army Act shall be and remain in force during the periods herein-after mentioned, and no longer, unless otherwise provided by Parliament (that is to say) :—

- (a) Within the United Kingdom, the Channel Islands, and the Isle of Man, from the thirtieth day of April one thousand nine hundred and thirteen to the thirtieth day of April one thousand nine hundred and fourteen both inclusive ; and
- (b) Elsewhere, whether within or without His Majesty's dominions, from the thirty-first day of July one thousand nine hundred and thirteen to the thirty-first day of July one thousand nine hundred and fourteen both inclusive.

(2) The Army Act, while in force, shall apply to persons subject to military law, whether within or without His Majesty's dominions.

(3) A person subject to military law shall not be exempted from the provisions of the Army Act by reason only that the number of the forces for the time being in the service of His Majesty, exclusive of the marine forces, is either greater or less than the number hereinbefore mentioned.

Prices in
respect of
billeting.

3. There shall be paid to the keeper of a victualling house for the accommodation provided by him in pursuance of the Army Act the prices specified in the First Schedule to this Act.

* * * * *

[Here follow the amendments of the Army Act made in 1913.]

FIRST SCHEDULE.

Accommodation to be provided.	Maximum Price.
Lodging and attendance for soldier where meals furnished.	Sixpence per night.
Breakfast as specified in Part I. of the Second Schedule to the Army Act.	Fivepence each.
Dinner as so specified	One shilling and one penny each.
Supper as so specified	Threepence each.
Where no meals furnished, lodging and attendance, and candles, vinegar, salt, and the use of fire, and the necessary utensils for dressing and eating his meat.	Sixpence per day.
Stable room and ten pounds of oats, twelve pounds of hay, and eight pounds of straw per day for each horse.	One shilling and nine pence per day.
Stable room without forage	Sixpence per day.
Lodging and attendance for officer	Two shillings per night.

Note.—An Officer shall pay for his food.

THE ARMY ACT.

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THE ARMY ACT.

[44 & 45 Vict. c. 58.]

Ss. 1-3. *An Act to consolidate the Army Discipline and Regulation Act, 1879, and the subsequent Acts amending the same (a).*

Preliminary.

Short title
of Act.

Mode of
bringing
Act into
force.

1. This Act may be cited for all purposes as the Army Act.

2. This Act shall continue in force only for such time and subject to such provisions as may be specified in an annual Act of Parliament bringing into force, or continuing the same.

NOTE.

For explanation of the reasons for bringing this Act into force annually by a separate Act, see Ch. II, paras. 18 and 35.

Division of
Act.

3. This Act is divided into five parts, relating to the following subject-matter; that is to say,

Part I, discipline :

Part II, enlistment :

Part III, billeting and impressment of carriages :

Part IV, general provisions :

Part V, application of military law, saving provisions, and definitions.

PART I.

DISCIPLINE.

CRIMES AND PUNISHMENTS.

Offences in respect of Military Service.

Part I.

s. 4.

Offences in
relation to
the enemy
punishable
with death.

4. Every person subject to military law who commits any of the following offences; that is to say,

- (1.) Shamefully abandons or delivers up any garrison, place, post, or guard, or uses any means to compel or induce any governor, commanding officer, or other person shamefully to abandon or deliver up any garrison, place, post, or guard, which it was the duty of such governor, officer, or person to defend; or

(a) The Act is printed with the amendments introduced by the Annual Acts down to and inclusive of the Act of 1913, in accordance with the directions of 48 Vict. c. 8, s. 8 (2) and also incorporates the amendments made by the T.R.F. Act.

- (2.) Shamefully casts away his arms, ammunition, or tools in the presence of the enemy ; or
- (3.) Treacherously holds correspondence with or gives intelligence to the enemy, or treacherously or through cowardice sends a flag of truce to the enemy ; or
- (4.) Assists the enemy with arms, ammunition, or supplies, or knowingly harbours or protects an enemy not being a prisoner ; or
- (5.) Having been made a prisoner of war, voluntarily serves with or voluntarily aids the enemy ; or
- (6.) Knowingly does when on active service any act calculated to imperil the success of His Majesty's forces or any part thereof ; or
- (7.) Misbehaves or induces others to misbehave before the enemy in such manner as to show cowardice,
- shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Act mentioned.

Part I.
s. 4.

NOTE.

1. *Subject to military law.*—For an enumeration of persons so subject see Part V, and introductory observations thereto.

2. Para. (1). *Shamefully abandons, &c.* This offence can only be committed by the person in charge of the garrison, post, &c., and not by the subordinate under his command. The surrender of a place by an officer charged with its defence can only be justified by the utmost necessity, such as want of provisions or water, the absence of hope of relief, and the certainty or extreme probability that no further efforts could prevent the place with its garrison, their arms and magazines, falling into the hands of the enemy. Unless the necessity is shown, the conclusion must be that the surrender or abandonment was shameful, and therefore an offence under this section. The word *post* includes any point or position (whether fortified or not) which a detachment may be ordered to hold ; and the abandonment of a post would also include the abandonment of a siege if there were no circumstances to warrant such a measure. It has not the same meaning as in s. 6 (1), where it has reference to the position of an individual.

Particulars of a charge under the first part of this sub-section must detail some circumstances which make the abandonment in a military sense shameful.

3. Para. (2). *Shamefully casts away.* The particulars of the charge must show the circumstances which make the act in a military sense shameful (see e.g. specimen charge sheet No. 1, p. 660). The word "shamefully" is held to mean by a positive and disgraceful dereliction of duty, and not merely through negligence or misapprehension or error of judgment.

4. Para. (3). *Treacherously or through cowardice.* The particulars of the charge must show the circumstances which indicate the treachery or cowardice. If there is no treachery or cowardice, the charge should be laid under section 5 (4).

5. Para. (4). *Supplies.* This would include the taking any steps to restore a supply of water cut off by our forces.

6. *Knowingly.* Evidence should if possible be given that the accused knew the person harboured or protected to be an enemy ; but if the fact of the

Part I. — harbouring or protecting is proved, the court may infer knowledge from the circumstances. The same observation applies to "voluntarily" in (5) and ss. 4-5. to "knowingly" in (6). See note to R.P. 60 (A).

7. Para. (6). For definition of active service, see s. 189 (1).

8. Para. (7). This paragraph is confined to acts, words, neglect, or omissions which show cowardice, and the particulars of the charge must be framed accordingly (see e.g. specimen charge sheet No. 2, p. 660). Drunkenness or treachery (unaccompanied by cowardice) cannot be dealt with under this paragraph.

9. *Misbehaves*. This means that the accused, from an unsoldierlike regard for his personal safety in the presence of the enemy, failed in respect of some distinct and feasible duty imposed upon him by a specified order or regulation, or by the well-understood custom of the service, or by the requirements of the case, as applicable to the position in which he was placed at the time.

Offences in relation to the enemy not punishable with death.

5. Every person subject to military law who on active service commits any of the following offences; that is to say,

- (1) Without orders from his superior officer leaves the ranks, in order to secure prisoners or horses, or on pretence of taking wounded men to the rear; or
- (2) Without orders from his superior officer wilfully destroys or damages any property; or
- (3) Is taken prisoner, by want of due precaution, or through disobedience of orders, or wilful neglect of duty, or having been taken prisoner fails to rejoin His Majesty's service when able to rejoin the same; or
- (4) Without due authority either holds correspondence with, or gives intelligence to, or sends a flag of truce to the enemy; or
- (5) By word of mouth or in writing, or by signals, or otherwise, spreads reports calculated to create unnecessary alarm or despondency; or
- (6) In action, or previously to going into action, uses words calculated to create alarm or despondency,

shall on conviction by court-martial be liable to suffer penal servitude, or such less punishment as is in this Act mentioned.

NOTE.

1. Para. (4). *Without due authority*. If *prima facie* a want of authority is shown, it will rest with the accused to show that he had authority, but any evidence of his having had authority which is known to the prosecutor should be adduced by the prosecutor. See R.P. 60 (A) and note. The terms of this paragraph include any unauthorised communication of intelligence to the enemy even by indirect methods, such as sending letters or sketches, or plans, to friends or newspapers, if the probable result would be their communication to the enemy. As to injurious disclosures not on active service, see s. 36. See also the provisions of the Officials Secrets Act 1911 as set out on p. 799 *et seq.*

2. Every one present with an army should bear in mind that the publication of letters from the army containing facts and opinions, often entirely erroneous.

relating to the operations or prospects of the campaign, can scarcely fail to have mischievous results; and it is well known that both during the Peninsular and Crimean wars, the enemy were indebted for information to English newspapers. See G.O. of Duke of Wellington, dated Celorico, 10 Aug., 1810, quoted in Simmons on Courts-Martial, p. 67. See also K.R. 458.

3. Para. (5). The particulars of the charge must detail the reports alleged to have been spread, and should indicate how they were calculated to create unnecessary alarm or despondency. A similar remark applies to a charge under para. (6). It is not necessary to aver or prove that the reports were false,—indeed the truth may increase the offence;—nor is it necessary to show that any effect was actually produced by the reports spread or words used: it could, however, seldom be expedient to try an officer or soldier under this section for expressions which could not be shown to have had some effect. The offence under para. (5) may be committed either with reference to the troops with whom the offender is serving, or with reference to the inhabitants of the country.

Part I.
—
ss. 5-6.

6. (1.) Every person subject to military law who commits any of the following offences, that is to say,

Offences
punishable
more
severely on
active
service than
at other
times.

- (a.) Leaves his commanding officer to go in search of plunder; or
- (b.) Without orders from his superior officer, leaves his guard, picquet, patrol, or post; or
- (c.) Forces a safeguard; or
- (d.) Forces or strikes a soldier when acting as sentinel; or
- (e.) Impedes the provost-marshal, or any assistant provost-marshal, or any officer or non-commissioned officer, or other person legally exercising authority under or on behalf of the provost-marshal, or, when called on, refuses to assist in the execution of his duty the provost-marshal, assistant provost-marshal, or any such officer, non-commissioned officer, or other person; or
- (f.) Does violence to any person bringing provisions or supplies to the forces; or commits any offence against the property or person of any inhabitant of or resident in the country in which he is serving; or
- (g.) Breaks into any house or other place in search of plunder; or
- (h.) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever, intentionally occasions false alarms in action, on the march, in the field, or elsewhere; or
- (i.) Treacherously makes known the parole, watchword, or countersign, to any person not entitled to receive it, or treacherously gives a parole, watchword, or countersign different from what he received; or
- (j.) Irregularly detains or appropriates to his own corps, battalion, or detachment any provisions or supplies proceeding to the forces, contrary to any orders issued in that respect;

or

Part 1.

s. 6.

Misbehaviour of
sentinel.

(k.) Being a soldier acting as sentinel, commits any of the following offences; that is to say,

(i) sleeps or is drunk on his post; or

(ii) leaves his post before he is regularly relieved,

shall, on conviction by court-martial,

if he commits any such offence on active service, be liable to suffer death, or such less punishment as is in this Act mentioned; and

if he commits any such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

(2.) Every person subject to military law who commits any of the following offences; (that is to say),

(a.) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever, negligently occasions false alarms in action, on the march, in the field, or elsewhere; or

(b.) Makes known the parole, watchword, or countersign to any person not entitled to receive it; or, without good and sufficient cause, gives a parole, watchword or countersign different from what he received,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment or such less punishment as is in this Act mentioned.

NOTE.

1. Subs. (1). The punishment for the offences here mentioned varies very widely according as the offences are committed on active service or not on active service; and where a man is charged with committing any of them on active service, those words must always be inserted in the charge. For the definition of active service, see section 189 (1).

2. (a.) This paragraph, having regard to the special military significance of the term "plunder," is applicable only to offences committed on active service. For meaning of "commanding officer" see Ch. XI, para. 11.

3. (b.) *Post*. As used with respect to an individual this word refers to the position or place in which it may be the duty of an officer or soldier to be, especially when under arms: and with respect in particular to a sentry, it applies to the spot where the sentry is left to the observance of his duties by the officer or N.C.O. posting him; or to any limits specially pointed out as his walk. In determining what, in any particular case, is a post, the court will use their military knowledge. See note 14 below.

The place in which the person was posted is material and should be stated in the charge.

4. (c.) *Safeguard*. A safeguard is a party of soldiers detached for the protection of some person or persons, or of a particular village, mansion, or other property. A single sentry posted from such party is still part of the safeguard, and it is as criminal to force him by breaking into the house, cellar, or other property under his especial care as to force the whole party.

5. (e.) *Provost-marshal.* As to appointment and duties of provost-marshal see s. 74, and note, and Ch. IV, para. 39. The court may exercise their military knowledge as to whether a person was a provost-marshal, assistant provost-marshal or a person legally exercising authority under or on behalf of the provost-marshal; but it will be open to the accused to show that the person he is charged with impeding was not properly appointed provost-marshal or assistant provost-marshal, or was not legally exercising the above-mentioned authority.

6. (f.) See Ch. XIV, para. 413 (footnote). It is frequently of the highest importance to conciliate the inhabitants of the country where the troops happen to be, and to induce them to bring provisions and supplies. From this point of view an offence which in other circumstances would be trivial, may require exemplary punishment. For instance, if a trifling theft has the effect of disturbing the confidence of the inhabitants and endangering the supplies of the army, the offence deserves very severe punishment. As an offence under the paragraph will really be a civil offence when not committed on active service, a person should not be charged under this paragraph when the offence is committed in the United Kingdom or in any other place where there is a civil court competent conveniently to deal with the case (see Ch. VII, para. 3). On the other hand, on active service, offences which, if committed in the United Kingdom, would be tried by a civil court, may be better tried under this enactment. For instance, a sutler accused of rape committed on an inhabitant of the country might properly be tried under it. The charge must set out the specific acts of violence or the specific offence alleged to have been done or committed.

7. (g.) The house or other place should be specified in the charge.

8. *Plunder.* See above note 2.

9. (h.) The particulars of the charge must set out exactly the signal made or the words used. If means other than words are used they must be specified briefly in the particulars of the charges; and the same remark applies to the statement of the "elsewhere."

10. *Intentionally.* See note 6 to s. 4 and Ch. VII, para. 24.

11. (i.) Although treachery must be averred in a charge under this paragraph, and want of good and sufficient cause in a charge under subs. 2 (b), the particulars of the charge need not detail the circumstances of the treachery or of the absence of good and sufficient cause. Upon proof that the accused made known the watchword to a person not entitled to receive it, or gave a watchword different from what he received, the court will be at liberty to infer the treachery or the absence of good and sufficient cause, unless the accused can show that he acted from good cause and not treacherously. The particulars of the charge must aver or show that the person was not entitled to receive the watchword.

Watchword will include any authorised pass-word not being parole or countersign which might, for example, be adopted for a particular emergency.

12. (j.) The particulars of the charge must show how the act charged was irregular and contrary to orders.

13. (k.) *Post.* See note 3 above. The fact of a sentry not being regularly posted is immaterial if he is charged with an offence committed while on his post. When, however, he leaves his post and commits an offence, it is always necessary to prove that he had been regularly posted. A soldier is liable, if, being one of the guard or body furnishing the sentry for the post, he has undertaken the duty of sentry, even though not posted in the regular way by a N.C.O. A sentry found drunk a short distance from his post should be charged with leaving his post: he cannot properly be charged with being

Part I. drunk on his post, though he may be charged with drunkenness, the particulars of the charge showing that he was on duty at the time. As to ss. 6-7. "stablemen," see K.R., 560.

14. Subs. (2). (a.) See note 9 above. This paragraph applies only to false alarms among the troops occasioned negligently.

15. (b.) See note 11 above. This paragraph only differs from subs. (1) (i) in the omission of the treacherous character of the offence.

Mutiny and Insubordination.

Mutiny and sedition. 7. Every person subject to military law who commits any of the following offences; that is to say,

- (1.) Causes or conspires with any other persons to cause any mutiny or sedition in any forces belonging to His Majesty's regular, reserve, or auxiliary forces, or Navy; or
- (2.) Endeavours to seduce any person in His Majesty's regular, reserve, or auxiliary forces, or Navy, from allegiance to His Majesty, or to persuade any person in His Majesty's regular, reserve, or auxiliary forces, or Navy, to join in any mutiny or sedition; or
- (3.) Joins in, or, being present, does not use his utmost endeavours to suppress, any mutiny or sedition in any forces belonging to His Majesty's regular, reserve, or auxiliary forces, or Navy; or
- (4.) Coming to the knowledge of any actual or intended mutiny or sedition in any forces belonging to His Majesty's regular, reserve, or auxiliary forces, or Navy, does not without delay inform his commanding officer of the same,

shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Act mentioned.

NOTE.

1. Para. (1). *Mutiny or sedition.* See as to these offences, Ch. III, paras. 4-6. A man might be tried under this paragraph for conspiring to cause a mutiny though the conspiracy proved abortive, and no mutiny took place.

2. Para. (2). Civilians who endeavour to seduce any person serving in His Majesty's forces by sea or land from allegiance to His Majesty, or to incite any such person to commit any traitorous practice whatsoever, are liable on conviction by a civil court to penal servitude for life under 37 Geo. III, c. 70, as amended by 7 Will IV and 1 Vict. c. 91.

3. Para. (3). *Being present.* Doubts might well arise whether men present when a mutiny was being contrived or had actually begun were actually joining it or not. This paragraph provides that if they are present and do not use their utmost endeavours to suppress it, they will be equally guilty as if they took that active part which constitutes joining in a mutiny. Consequently, men present on parade, or present accidentally, or induced by false pretences to attend a meeting, where a mutiny is begun or contrived, will be guilty of an offence under this paragraph although they took no active part, and therefore can hardly be said to have joined in the mutiny. If a doubt exists as to whether any individual did or did not take

such an active part as to have joined in the mutiny, he may be charged in alternative charges under para. (1) and this paragraph. **Part I.**

ss. 7-8.

4. Each one of a body of men not marching, or not coming from their barrack room when duly ordered, is guilty of mutiny, if he cannot show that his disobedience was occasioned solely by reason of compulsion.

5. *Utmost endeavours.* This does not necessarily mean the utmost of which a man is capable, but such endeavours as a man might be reasonably and fairly expected to make.

6. Para. (4). *Commanding officer.* This expression will include any person having a military command over the person who has knowledge of the mutiny or sedition, and is not limited by R.P. 129, see Ch. XI, para. 11. A private soldier, for example, would properly inform his serjeant, and information so given would be held to be given to his commanding officer within the meaning of the section

8. (1.) Every person subject to military law who commits any of the following offences; that is to say, **Striking or threatening superior officer.**

Strikes or uses or offers any violence to his superior officer, being in the execution of his office, shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Act mentioned; and

(2.) Every person subject to military law who commits any of the following offences; that is to say,

Strikes or uses or offers any violence to his superior officer, or uses threatening or insubordinate language to his superior officer, shall on conviction by court-martial,

if he commits such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

if he commits such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

1. Subs. (1). *In the execution of his office.* It is difficult accurately to define these words, but the military knowledge and experience of the members of a court-martial will enable them in most instances readily to determine whether the superior is or is not in the execution of his office. An officer in plain clothes may undoubtedly be in the execution of his office; but where the officer is in plain clothes, it becomes necessary to prove some knowledge on the part of the soldier at the time of offering the violence that the person assaulted was an officer, which is not the case where the officer is in uniform. On the other hand, there may be circumstances in which an officer in uniform is not in the execution of his office. It may be taken in general that striking or using violence to any superior officer by a soldier over whom it is at the time the duty of that superior officer to maintain discipline, would be striking or using violence to him in the execution of his office.

(M.L.)

2 B

Part I.

s. 2.

2. *Offers any violence.* These words include any defiant gesture or act which if completed would end in actual violence, but do not extend to an insulting or impertinent gesture or act from which violence could not result. For example, a soldier throwing down his arms or his equipment on parade, or throwing away his cap or belt in an impertinent manner, but in such a direction that they could not strike a superior, could not be deemed to offer violence within the meaning of this enactment. So also a man shaking his fist, or even drawing a bayonet, or otherwise making a show of violence against a superior, behind the bars of a cell or at such a distance that striking him was at the moment impossible, is not guilty of offering violence. On the other hand, throwing a missile would be "using" or "offering" violence according to the results, and pointing a loaded firearm at a superior would be "offering" violence.

3. If the violence be used in self-defence, for instance, if it be shown that it was necessary, or that at the moment the accused had reason to believe it was necessary for his actual protection from injury, and that he used no more violence than was reasonably necessary for this purpose, he is legally justified in using it, and commits no offence.

4. Provocation is not a ground of acquittal, but tends to mitigate the punishment; evidence of provocation, if tendered, must therefore be admitted in order to render the sentence valid.

5. Subs. (2). *Threatening or insubordinate language.* Where the charge is for threatening or insubordinate language the particulars of the charge must state the expressions or their substance, and the superior to whom they were addressed.

6. Expressions used merely for exculpation would not be punishable under this section. It has been ruled that "expressions, however offensive to a superior, that are used (1) in the course of a judicial inquiry, (2) by a party to that inquiry, and (3) upon a matter pertinent to and *bona fide* for the purposes of that inquiry as, for instance, the credibility of a witness, are privileged, and cannot be made the subject of a criminal charge."

7. Expressions used of a superior officer and not within his hearing, or which cannot be proved to be used to a superior officer, must be charged as an offence under s. 40, and not under this section, but the use of threatening or otherwise insubordinate language regarding one superior to (in the sense that it is intended to be heard by) another superior constitutes an offence of "using insubordinate language" under this section.

8. The words must be used with an insubordinate intent, that is to say, they must be, either in themselves, or in the manner or circumstances in which they are spoken, insulting or disrespectful, and in all cases it must reasonably appear that they were intended to be heard by a superior.

9. As to the use of coarse and abusive language by a man when drunk, see Ch. III, paras. 30, 31; and for general observations on insubordinate language, see Ch. V, para. 86.

10. Improper language which does not amount to insubordinate language, or cannot be proved to be used to a superior officer, must be charged under s. 40.

11. As to active service, see note 1 to s. 6.

12. *Superior officer.* This expression in this section means not only a superior in rank as defined by s. 190 (7), but also a senior in the same grade where that seniority gives power of command according to the usages of the service, but one private soldier can never be the "superior officer" of another. The court should be satisfied, before conviction, that the accused knew the person with respect to whom the offence was committed to be a superior officer. If the superior did not wear the insignia of his rank, and was

not personally known to the accused, evidence would be necessary to show that the accused was otherwise aware of his being his superior officer. The intention being of the essence of the offence, where the accused is charged with an offence against a superior officer who is of the same grade evidence should be adduced to show that the latter is senior to the accused.

Part I.
ss. 8-9.

13. A military policeman is not, as such, the superior officer of a private soldier. When a soldier, who is arrested for drunkenness, strikes a N.C.O. (being his superior officer) of the military police and is brought to trial, the convening officer will consider according to the particular circumstances, whether it is necessary or expedient to charge the soldier with the graver offence of striking his superior officer, or whether the case would be met by charging the accused with one of the less serious offences specified in s. 10 (2) or (3).

14. See generally as to offences against superiors, K.R., 554.

9. (1.) Every person subject to military law who commits the following offence; that is to say,

Disobedience to superior officer.

Disobeys, in such manner as to show a wilful defiance of authority, any lawful command given personally by his superior officer in the execution of his office, whether the same is given orally, or in writing, or by signal, or otherwise,

shall on conviction by court-martial be liable to suffer death or such less punishment as is in this Act mentioned; and

(2.) Every person subject to military law who commits the following offence; that is to say,

Disobeys any lawful command given by his superior officer, shall, on conviction by court-martial,

if he commits such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

if he commits such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

1. An omission arising from misapprehension or forgetfulness is not an offence under this section. Nor is the act of a soldier who declines to sign his accounts upon the ground that they are incorrect. Nor is failure to obey a command where obedience would be physically impossible.

2. For the meaning of the expression "superior officer," see note 12 to s. 8.

3. As to active service, see Ch. III, para. 33, and note 1 to s. 6.

4. As to disobedience of general or garrison orders, see s. 11.

5. Subs. (1). *Disobeys in such manner . . . any lawful command.* A charge under this sub-section would, as a rule, be reserved for trial by a general court-martial. The particulars of the charge must specify the command, and state that it was given personally, and must show the manner in which the disobedience showed a wilful defiance of authority; see Ch. III, paras. 8-10. The particulars should also show how the superior officer was in the execution of his office (see note 1 to s. 8 and specimen charge sheets Nos. 13 and 21, p. CC3), but the court may make use of their military knowledge for determining whether the superior officer was in the execution of his office, and

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Part I. whether he was a superior officer who by virtue of his office was authorised to give such a command.

ss. 9-10. 6. The command must be one relating to military duty, that is to say, the disobedience of it must tend to impede, delay, or prevent a military proceeding. Thus a command given by an officer to his soldier-servant to perform some domestic office not relating to military duty is not a command within the meaning of this section. A soldier who refuses to take a letter relating to private theatricals upon the order of a non-commissioned officer does not disobey a lawful command.

7. Religious scruples furnish no excuse for disobedience.

8. The disobedience must be immediate or proximate to the command, and actual non-compliance must be proved. A man who says "I will not do it" does not necessarily disobey. A man who when ordered to do a duty at a future time says "I will not do it," does not thereby commit an offence under this section, though he may be liable under s. 8 (2). See Ch. III, para. 9.

9. Subs. (2). *Disobeying lawful command.* To establish an offence under this sub-section, it is not requisite to prove that the command was given personally by a superior. It is sufficient to show that it was given by the deputy or agent of a superior, whom, according to the usages of the service or otherwise, the accused might reasonably suppose to have been duly authorised to notify to him the command of his superior. But it must be a specific command to an individual, and must be given as being the command of a superior who by virtue of his office or otherwise was authorised to give such a command.

A private soldier when in open arrest is to attend all parades, and all soldiers in arrest may be ordered to perform such duties as may be necessary to relieve them from the charge of any cash, stores, accounts or office of which they may have charge or for which they are responsible. They may also be ordered in an emergency, or on the line of march, or when in a detention barrack undergoing sentence, to bear arms.

If ordered to perform any other duty while in arrest, such an order would not be a lawful command. See K.R. 473, 482.

Insubordination.

10. Every person subject to military law who commits any of the following offences; that is to say,

- (1.) Being concerned in any quarrel, fray, or disorder, refuses to obey any officer (though of inferior rank) who orders him into arrest, or strikes, or uses or offers violence to, any such officer; or
- (2.) Strikes, or uses or offers violence, to any persons, whether subject to military law or not, in whose custody he is placed, and whether he is or is not his superior officer; or
- (3.) Resists an escort whose duty it is to apprehend him or to have him in charge; or
- (4.) Being a soldier breaks out of barracks, camp, or quarters, shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment or such less punishment as is in this Act mentioned.

NOTE.

1. Para. (1). A person may be charged under this paragraph whether the officer who ordered him into arrest was of inferior or superior rank, but where the officer was of superior rank, the offender may be charged also under s. 9. Only officers should be charged under this paragraph.

2. Para. (2). It will be observed that a charge may be laid under this paragraph for assaulting a civilian policeman, if the person committing the assault is subject to military law, and has been placed in the policeman's custody by an officer, warrant-officer, or N.C.O.

3. Para. (3). The resistance may be passive. A man lying down and refusing to move, if physically able to move, resists. The particulars of the charge should specify the nature of the resistance; (see specimen charge-sheet No. 24 A, p. 664). The court will use their military knowledge to determine whether it was the duty of the escort to apprehend the accused or to have him in charge. Breaking away from an escort is not by itself an offence under this section, but may be charged under s. 22.

4. Para. (4). *Breaks out of barracks, &c.* This offence consists in a soldier quitting barracks, &c., at a time when he had no right to do so, either because he was on duty or under punishment, or because of some regulation or order; and it is immaterial whether the offence was managed by violence, stratagem, disguise, or simply by walking past a sentry unnoticed. The mode in which the act was effected will, however, assist a C.O. in determining whether to deal with it as a mere breach of discipline under this paragraph, or to reserve it for trial as amounting to desertion. The particulars of the charge must show that the absence from barracks, &c., was without permission, or otherwise unlawful.

5. If the charge be for breaking out of barracks, it must be proved that the accused left the confines of the barracks as charged, and so also if the charge is for breaking out of camp. A charge of breaking out of quarters would hold good in the case of man quartered in one part of a barrack and improperly leaving that part for another part where he had no right to be.

6. A soldier who breaks out of barracks, camp or quarters, and remains absent for some time should, if brought to trial by court-martial, be charged only with the absence without leave; and, if he was a defaulter at the time, the fact should be stated in the particulars of the charge. See K.R. 581 A.

11. Every person subject to military law who commits the following offence; that is to say,

Neglect to obey garrison or other orders.

Neglects to obey any general or garrison or other orders, shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and, if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

Provided that the expression "general orders" in this section shall not include His Majesty's regulations and orders for the army, or any similar order in the nature of a regulation published for the general information and guidance of the army.

NOTE.

1. The orders specified in this section are standing orders or orders having a continuous operation, whether garrison or regimental, or of a like nature. Disobedience of a specific order in the nature of a command should be dealt with under s. 9, and non-compliance, through forgetfulness or negligence, with an order to do some specific act at a future time under s. 40.

2. Ignorance of the order is not an exculpation if the order is one which the accused ought in the ordinary course to know. But a misapprehension reasonably arising from want of clearness in the order is a ground for exculpation. The existence of the orders and the fact of the neglect must

Part I. ss. 11-12. be proved. A copy of the order contravened must be produced on oath to the court and the court will make a record in the proceedings of its having been so produced; a written order cannot be proved by oral testimony. Disobedience of a K.R. may be punished under s. 40, but if a K.R. is published as a regimental order, it acquires also the character of a regimental order, and disobedience to it may be punished accordingly.

3. The offence of concealment of venereal disease is to be dealt with under this section. K.R. 462.

Desertion, Fraudulent Enlistment, and Absence without Leave.

Desertion.

12. (1.) Every person subject to military law who commits any of the following offences; that is to say,

(a.) Deserts or attempts to desert His Majesty's service; or

(b.) Persuades, endeavours to persuade, procures or attempts to procure any person subject to military law to desert from His Majesty's service,

shall, on conviction by court-martial,

if he committed such offence when on active service or under orders for active service, be liable to suffer death, or such less punishment as is in this Act mentioned; and

if he committed such offence under any other circumstances, be liable for the first offence to suffer imprisonment, or such less punishment as is in this Act mentioned: and for the second or any subsequent offence to suffer penal servitude, or such less punishment as is in this Act mentioned.

(2.) Where an offender has fraudulently enlisted once or oftener, he may, for the purposes of trial for the offence of deserting or attempting to desert His Majesty's service, be deemed to belong to any one or more of the corps to which he has been appointed or transferred as well as to the corps to which he properly belongs; and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and if he be convicted thereof to punish him accordingly; and further, it shall be lawful, on conviction of a person for two or more such offences, to award him the higher punishment allowed by this section for a second offence as if he had been convicted by a previous court-martial of one of such offences.

(3.) For the purposes of the liability under this section to the higher punishment for a second offence, a previous offence of fraudulent enlistment may be reckoned as a previous offence under this section.

NOTE.

1. See Ch. III, paras. 13-20; K.R., 514-546.

2. *On active service.* See note 1 to s. 6.

3. As to a false statement by a soldier to his C.O. that he has been guilty of desertion or fraudulent enlistment, see s. 27 (3).

4. As to forfeiture of prior service on conviction for desertion or fraudulent enlistment, see ss. 79 (2), 84 (2) and Note, and as to liability to general service or transfer on conviction or confession of desertion or fraudulent enlistment, see s. 83 (7); as to liability to transfer of soldier delivered into military custody or committed by a court of summary jurisdiction as a deserter, see s. 83 (8); as to descriptive reports of deserters, escorts, and generally, see K.R., 514-546; and as to inquiry into absence and confession of desertion or fraudulent enlistment, see ss. 72, 78 and R.P. 125.

5. A person charged with desertion may be found guilty of attempting to desert, or of being absent without leave, and a person charged with attempting to desert may be found guilty of desertion, or of being absent without leave s. 56 (8) (4).

6. If the accused is put on his trial for two offences of desertion, or for fraudulent enlistment and desertion, and it is desired that the higher punishment allowed for a second offence should be awarded, the charges must be on separate charge sheets, and the trials distinct, though they may be held before the same court. To enable the punishment of penal servitude to be awarded, the court must, of course, be a general court-martial. In other cases the general principles as to what may and what may not be included in the same charge sheet, laid down in note 1 to R.P. 62 will apply to the offences of desertion and fraudulent enlistment equally as to other offences.

7. The case is similar where the charge is for fraudulent enlistment under s. 13; but in that case, if he has deserted first, and fraudulently enlisted afterwards, he cannot be awarded the higher punishment unless he has served between the date of the desertion and the date of the fraudulent enlistment. s. 13 (2) (3).

8. For example, if a soldier deserted on the 1st of October, 1910, and was apprehended, convicted, and punished, and after undergoing his punishment returns to the ranks, and on the 10th of March, 1913, fraudulently enlists, then, on conviction for such fraudulent enlistment, he can be sentenced to penal servitude, just as if the former conviction for desertion had been a conviction for fraudulent enlistment. If, however, a soldier who deserted on the 5th of January, 1913, and is not apprehended, abandons his intention of permanently quitting the service, and fraudulently enlists on the 15th of July, 1913, then, although he may be convicted both of the desertion and of the fraudulent enlistment, he cannot be sentenced to penal servitude for the fraudulent enlistment, as the desertion was his absence "next before the fraudulent enlistment," and the exception in s. 13 (3) applies.

9. Where the desertion and fraudulent enlistment form in effect one transaction, the man should not as a rule be tried for both offences.

10. Any person who falsely represents himself to any authority to be a deserter may be punished by a civil court of summary jurisdiction by three months' imprisonment (s. 152); see also as to punishment by a like court of persons inducing soldiers to desert, s. 153; and as to the apprehension of deserters, s. 154.

11. To establish desertion it is necessary to prove some circumstance justifying the inference that the accused intended not to return to military duty in any corps, or intended to avoid some important particular service, such as active service, embarkation for service abroad or service in aid of the civil power. (See K.R. 1502 and 1504.)

12. As to desertion by men of the Territorial Force, see T.R.F. Act, s. 20.

13. When under K.R. 548 (ii) a superior officer directs the case of an offender against whom a charge of desertion has been preferred to be summarily disposed of, he should order the offence to be disposed of as one of absence without leave.

Part I. 14. *Attempt to desert.*—To establish an attempt to desert, some act which, if completed, would constitute desertion, as above described, must be proved. **ss. 12-13.** A mere intention to desert does not amount to an attempt to desert.

Fraudulent enlistment. 13. (1.) Every person subject to military law who commits any of the following offences; that is to say,

- (a.) When belonging to either the regular forces, or the militia or Territorial Force when embodied, or the yeomanry when called out for actual military service, without having obtained a regular discharge therefrom, or otherwise fulfilled the conditions enabling him to enlist or enrol, enlists or enrolls himself in His Majesty's regular forces, or in any force raised in India or a colony, or
- (b.) When belonging to the regular forces without having fulfilled the conditions enabling him to enlist, enrol, or enter, enrolls himself, or enlists in the militia or Territorial Force, or in any of the reserve forces, or enters the Royal Navy,

shall be deemed to have been guilty of fraudulent enlistment, and shall on conviction by court-martial be liable—

- (i.) for the first offence to suffer imprisonment, or such less punishment as is in this Act mentioned; and
- (ii.) for the second or any subsequent offence to suffer penal servitude, or such less punishment as is in this Act mentioned.

(2.) When an offender has fraudulently enlisted on several occasions he may, for the purposes of this section, be deemed to belong to any one or more of the corps to which he has been appointed or transferred, as well as to the corps to which he properly belongs; and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and if he be convicted thereof to punish him accordingly; and further, it shall be lawful, on conviction of a person for two or more such offences, to award him the higher punishment allowed by this section for a second offence as if he had been convicted by a previous court-martial or one of such offences.

(3.) Where an offender is convicted of the offence of fraudulent enlistment, then, for the purposes of his liability under this section to the higher punishment for a second offence, the offence of deserting, or attempting to desert, His Majesty's service, may be reckoned as a previous offence of fraudulent enlistment under this section, with this exception, that the absence of the offender next before any fraudulent enlistment shall not, upon his conviction for that fraudulent enlistment, be reckoned as a previous offence of deserting or attempting to desert.

NOTE.

Part I.

1. The particulars of the charge must specify the force to which the accused belonged at the time of his enlistment. A member of the Territorial Force enlisting when the Territorial Force is not embodied, cannot be charged under this section, though he may be charged under s. 33 for making a false answer.
2. Subs. (1) (a) This sub-section covers the case of a soldier of the Royal Marines who enlists in the regular forces while a deserter or an absentee from one of His Majesty's ships. See Proviso (a) to s. 179 (15).
3. Subs. (1) (b) covers the case of a soldier who enters the Royal Navy, but subs. (1) (a) does not cover that of a sailor who enlists in the army. The latter case can be dealt with under s. 33.
4. Where a soldier is charged with fraudulent enlistment, by reason of which he has obtained a free kit, the receipt of that free kit must be mentioned in the particulars of the charge and (unless the accused pleads guilty) proved in evidence in order to enable the court to sentence him to a deduction from his pay as compensation for the free kit, but the charge of fraudulently obtaining a free kit cannot by itself be maintained; see R.P. 11 (F), K.R., 561, and R.P., App. I. Note as to use of Forms of Charges (28), p. 648. Where the fraudulent enlistment has taken place more than three years before the trial, the obtaining of a free kit should not be mentioned, as a sentence of stoppages based upon that circumstance is illegal.
5. A copy or duplicate of the attestation paper is proof of the enlistment, and the issue of a free kit may be proved by a copy of a record thereof in the regimental books (s. 163 (1), (g) and (h)).
6. Subs. (8). As to conviction for two offences, and the punishment for the second offence, see notes 6-9 to s. 12.
7. For references to further provisions of the Act as to fraudulent enlistment and desertion, see note 4 to s. 12.

14. Every person subject to military law who commits any of the following offences; that is to say,

Assistance of or connivance at desertion.

- (1.) Assists any person subject to military law to desert His Majesty's service; or
- (2.) Being cognisant of any desertion or intended desertion of a person subject to military law, does not forthwith give notice to his commanding officer, or take any steps in his power to cause the deserter, or intending deserter, to be apprehended,

shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

1. Para. (1). It must be proved that the accused knew that the assistance given by him was for the purpose of the desertion.
2. Para. (2). *Does not forthwith give notice.* The time at which the accused became cognisant of the desertion, and, if he gave notice to his C.O., the time at which he gave notice, are material and should be specified in the charge.

Part I. 8. *Commanding officer.* This includes any person having military command over the accused. The court may use their military knowledge in determining whether the person is for this purpose a C.O. or not. See Ch. VI, para. 10, and ss. 14-15. note 6 to s. 7.

4. If the charge is under the latter part of (2), the particulars must allege the steps which it was in the power of the accused to take in order to cause the deserter, or intending deserter, to be apprehended.

Absence
from duty
without
leave.

15. Every person subject to military law who commits any of the following offences; that is to say,

- (1.) Absents himself without leave; or
- (2.) Fails to appear at the place of parade or rendezvous appointed by his commanding officer, or goes from thence without leave before he is relieved, or without urgent necessity quits the ranks; or
- (3.) Being a soldier, when in camp or garrison, or elsewhere, is found beyond any limits fixed or in any place prohibited by, any general, garrison, or other order, without a pass or written leave from his commanding officer; or
- (4.) Being a soldier, without leave from his commanding officer, or without due cause, absents himself from any school when duly ordered to attend there,

shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

1. Para. (1). *Absents himself.* See Ch. III, paras. 13-19; and for the power of summary award of detention by the commanding officer, see s. 46 (5).

2. In charges under this section, if the absence or failure to appear or other act is proved, it will lie on the accused to show that he had leave or was under urgent necessity and had due cause for the absence, failure, or other act. A soldier tried for desertion or attempted desertion may, under s. 56, be found guilty of absence without leave. When a soldier has been absent without leave for 21 clear days a court of inquiry will be assembled (s. 72). See also K.B. 673, R.P. 125.

3. The absence must be from military supervision, i.e., the place where it is the soldier's duty to be, and where he ought to be found if wanted. Usually it must be absence from his barrack, camp, or station, but if his duty is to be in one part of the barrack, or he cannot be found when wanted, his absence from a part only of the barrack may amount to absence without leave.

4. If the hour of his absence is material for the purpose of proving a day's absence (see s. 138 and note, and s. 140), the hours of his departure and return must be stated in the particulars.

5. Involuntary absence, caused, e.g., by disability through being ill or being kept in custody by the civil power, even though arising from the wrongful act of the accused, is not an offence under this section.

6. Where the absence was originally voluntary and subsequently becomes involuntary the length of the absence without leave must be reckoned only to the time when the absence becomes involuntary.

7. Under para. (2) the particular parade should be specified, so that the accused may be able to show, if he can, that he was not by order or custom, or for other reasons, bound to attend that parade.

8. It must be proved not only that both the time and the place of the parade or rendezvous were appointed by the C.O., but also that the accused had actual or constructive notice of that time and place. If any difficulty arises in proving this the charge should be laid under sub-section (1).

9. Under para. (3), ignorance of the order, though it would properly tend to mitigate the punishment, does not entirely exculpate the accused. But misapprehension reasonably arising from want of clearness in the order may be a ground of exculpation.

10. A man absent without leave is not also liable to trial for failing to attend parades, &c., during the period of his absence, and if he is tried on alternative charges for both offences, he can be convicted only upon one of the charges.

11. Paras. (3) and (4). *Commanding officer.* Any officer having military command over the accused and authority to grant leave will be a C.O. within the meaning of these paragraphs. This matter can therefore be determined by the military knowledge of the court.

12. A member of the Territorial Force, who, while out for annual training in camp, absents himself without leave, would be liable under this section. See also T.R.F. Act, s. 20

Disgraceful Conduct.

16. Every officer who, being subject to military law, commits the following offence; that is to say,

Scandalous
conduct of
officer.

behaves in a scandalous manner, unbecoming the character of an officer and a gentleman,

shall on conviction by court-martial be cashiered.

NOTE.

1. An act or neglect which amounts to any of the offences specified in the Act or which is to the prejudice of good order and military discipline, ought not, as a rule, to be tried under this section. Scandalous conduct may be either of a military or social character. But a charge of a social character is not to be preferred under this section, unless it is of so grave a nature as to render the officer deserving of being cashiered, and therefore scandalous in respect of his military character. Social misconduct which is not so grave as to bring scandal on the service, should not be made a ground of charge against an officer, but may well form the subject of reproof and advice on the part of his commanding officer or some other superior officer.

2. It will be noticed that there is no power to award any other punishment than cashiering on conviction for this offence.

17. Every person subject to military law who commits any of the following offences; that is to say,

Fraud by
persons in
charge of
moneys or
goods.

Being charged with or concerned in the care or distribution of any public or regimental money or goods, steals, fraudulently misapplies, or embezzles the same, or is concerned in or connives at the stealing, fraudulent misapplication, or embezzlement thereof, or wilfully damages any such goods, shall on conviction by court-martial be liable to suffer penal servitude, or such less punishment as is in this Act mentioned.

Part I.

NOTE.

ss. 17-18. 1. A soldier convicted of an offence under this section forfeits all good conduct badges and is placed in the same position as regards earning badges as a recruit. (See s. 190 (18) and P.W., Art. 1236.)

2. The distinction between stealing and the other offences is roughly this— that a man is not said to steal a thing if, previously to the time at which he converted it to his own use, he was lawfully in possession of it. See Ch. VII, paras. 56, 57, 58.

3. For definition of embezzlement see Ch. VII, para. 59. Under s. 56 a person charged with stealing may be found guilty of embezzlement or of fraudulent misapplication, and a person charged with embezzlement may be found guilty of stealing or of fraudulent misapplication.

4. This section does not apply to ordinary thefts, which are dealt with in s. 18 (4), but to those more serious offences committed by persons in a position of trust in relation to public or regimental property, where placed under their charge.

5. If the charge is for fraudulent misapplication or embezzlement it must allege that the property was improperly applied for the use of the accused himself or some person connected with him, and not for a public purpose.

6. If no evidence is forthcoming as to the particular mode of misapplication, the court may, in the absence of explanation from the accused, infer that the property was misapplied from the fact of its not having been properly applied. See Ch. VII, para. 59.

7. Each instance of embezzlement or fraudulent misapplication should be in a separate charge.

8. A mere error or irregularity in accounts, or a mistaken misapplication of money or goods, does not constitute an offence under this section. There must be an intent to defraud on the part of the accused, either for the benefit of himself or somebody else; and this must be particularly recollected in the case, for example, of a N.C.O.'s accounts getting into confusion, through the neglect or carelessness of superiors.

9. The particulars of the charge must show in detail that the accused was charged with or concerned in the care or distribution of the money or goods which are alleged to have been fraudulently misapplied or embezzled (see specimen charge sheet No. 40, p. 667), but the court may use their military knowledge to determine that the accused, if holding a particular office, was, by virtue of his office, so charged or concerned. A soldier posted as sentry over a place containing public property, would not be "charged with" the care of the property within the meaning of this section.

10. The expression "charged with" means officially charged with, that is to say, in virtue of the public office which the accused formally holds. A corporal or private entrusted by a Company Quartermaster Serjeant for his own convenience with public money would not fall under this section, although he might be convicted under s. 18.

11. As to court of inquiry on discovery of loss of stores, &c., see K.R., 668-671; and as to restitution of property see s. 75.

12. At home stations, in all cases of fraud the charge and summary of evidence must be submitted to the Judge Advocate General before the trial is ordered. This does not apply to cases of simple theft. K.R., 561A.

Disgraceful
conduct of
soldier.

18. Every soldier who commits any of the following offences; that is to say,

(1.) Malingers, or feigns or produces disease or infirmity; or

- (2.) Wilfully maims or injures himself or any other soldier, whether at the instance of such other soldier or not, with intent thereby to render himself or such other soldier unfit for service, or causes himself to be maimed or injured by any person, with intent thereby to render himself unfit for service; or
- (3.) Is wilfully guilty of any misconduct, or wilfully disobeys, whether in hospital or otherwise, any orders, by means of which misconduct or disobedience he produces or aggravates disease or infirmity, or delays its cure; or
- (4.) Steals or embezzles or receives, knowing them to be stolen or embezzled, any money or goods the property of a comrade or of an officer, or any money or goods belonging to any regimental mess or band, or to any regimental institution, or any public money or goods; or
- (5.) Is guilty of any other offence of a fraudulent nature not before in this Act particularly specified, or of any other disgraceful conduct of a cruel, indecent, or unnatural kind, shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

1. A soldier convicted of an offence under this section forfeits all good conduct badges, and is placed in the same position as regards earning badges as a recruit. (See s. 190 (18) and P.W. 1236.)

2. Paras. (1)–(3). The charge should show in what way a soldier has malingered, or what disease or infirmity he has feigned or produced, or what particular injury has been committed, or of what misconduct or wilful disobedience he has been guilty. In a case under para. (2) evidence will have to be given of the intent, but it would be sufficient to raise a presumption of intent if the act were shown to have been done wilfully and not accidentally.

3. To *malingering* is to pretend illness, or to produce or protract disease, in order to escape duty.

4. *Feigning*. This term means not merely that a soldier reported himself sick when he was not sick, but that he reported himself sick when he *knew* that he was not sick, and that he feigned or pretended certain symptoms which the medical officer was satisfied did not exist.

5. The misconduct under para. (3) must be with the intent of producing or aggravating the disease, or delaying the cure, as the case may be. The involuntary production, aggravation, or prolongation of *delirium tremens* by intemperate habits, or of venereal disease by immoral conduct, does not render a soldier liable under this paragraph. Nor would a soldier incur liability under it who refuses to undergo a surgical operation.

6. Para. (4). See notes on s. 17, and Ch. VII, paras. 56 *et seq.*

7. If it turns out that the property belongs to some person or persons not included in the category contained in this paragraph, the accused must be acquitted, as the offence could in that case only be charged under s. 41.

Part I. 8. The paragraph speaks only of a *regimental mess* or *regimental institution*. In the case therefore of the theft, &c. of property belonging to a *garrison mess* or a *garrison institution*, a charge cannot be brought under this paragraph and the offender would have to be tried under s. 41.

ss. 18-20.

9. If a man steals the great coat of his comrade, he can be charged with stealing it either as being public property or as being the property of his comrade; for although the great coat is public property, yet the comrade has possession of it, so that the thief may be charged with stealing the property of a comrade. Ch. VII, para. 56.

10. The value of articles in respect of which the offender should be sentenced to stoppages must always be stated in the particulars of the charge: see R.P. 11 (F) and note, and K.R., 563, and footnote.

11. It has been ruled that a Branch of the Royal Army Temperance Association is not a regimental institution within the meaning of this paragraph.

12. Where a soldier is charged with theft, the ownership of the property alleged to have been stolen should be clearly proved in evidence, and its identity established (where possible) by production and identification in court; if not produced its non-production should be accounted for.

13. Para. (5). A charge under this paragraph for anything that is an offence under any previous enactment of the Act will be bad.

14. *Of a fraudulent nature.* The particulars must show that there was fraud in the act with which the accused is charged, amounting to a crime according to the ordinary criminal law; mere misappropriation of money or irregularity in accounts will not be sufficient.

15. A reservist who has wrongfully enlisted cannot be charged with obtaining reserve pay by false pretences or fraud.

16. *Disgraceful conduct.* The particulars of the charge must specify the details of the particular act or acts alleged to constitute the disgraceful conduct.

17. *Of an indecent kind.* Offences of an indecent kind against children and young persons of the female sex, should be charged under s. 41 and not under this section. The expediency of trying such offences before a civil court should be considered in each case, and where they are committed against natives of India or of a colony, the cases should usually be dealt with by a civil court, if this course can reasonably be followed.

Drunkenness.

**Drunken-
ness.**

19. Every person subject to military law who commits the following offence; that is to say,

The offence of drunkenness, whether on duty or not on duty, shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned, and, either in addition to, or in substitution for, any other punishment, to pay a fine not exceeding one pound.

NOTE.

See generally as to this offence Ch. III, paras. 25-30, and s. 46 (2) (3), and note

Offences in relation to Persons in Custody.

Permitting
escape of
person in
custody.

20. Every person subject to military law who commits any of the following offences; that is to say,

1. When in command of a guard, picket, patrol, or post, releases without proper authority, whether wilfully or otherwise, any person committed to his charge; or

- (2.) Wilfully or without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to keep or guard, Part I.
ss. 20-21.

shall on conviction by court-martial be liable if he has acted wilfully to suffer penal servitude, or such less punishment as is in this Act mentioned, and in any case to suffer imprisonment or such less punishment as is in this Act mentioned.

NOTE.

1. In a charge under para. (1), if proof is given that the person in custody was released, the onus is on the accused to show proper authority. The court may use their military knowledge with respect to whether the authority alleged was or was not sufficient.

2. In a charge under para. (2), if there is a doubt as to the accused having acted *wilfully*, he should be charged with having acted *without reasonable excuse*, or he may be charged with having acted wilfully, and in an alternative charge with having acted without reasonable excuse. See s. 56 (5), and note. A man commits this offence *wilfully* by any act or omission, intended to allow the escape of the person committed to his charge, or whom it was his duty to guard or keep.

3. Where an escort consisting of a corporal and a private lose the soldier in their charge, the corporal is liable to conviction unless he can prove that the escape took place in circumstances against which he could not reasonably guard. The private would be guilty, upon proof that he shared in the wilful act or negligence of the corporal, or that the soldier while committed to his charge during the temporary and necessary absence of the corporal was allowed to escape, unless he could show that he used all reasonable means to guard against the escape. In the latter case the corporal would not be guilty if he could show that his temporary delegation of his duty to the private was occasioned by some necessary cause, and that he took reasonable precautions for the safe custody of the soldier during his absence.

4. A man who, having completed a term of imprisonment or detention, is being conducted from the prison or detention barrack to rejoin his unit, is not "committed to the charge" of the N.C.O. conducting him within the meaning of this section.

21. Every person subject to military law who commits any of the following offences; that is to say, Irregular arrest or confinement.

- (1.) Unnecessarily detains a person in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation; or
- (2.) Having committed a person to the custody of any officer, non-commissioned officer, provost-marshal, or assistant provost-marshal, fails without reasonable cause to deliver at the time of such committal, or as soon as practicable and in any case within twenty-four hours thereafter, to the officer, non-commissioned officer, provost-marshal, or assistant provost-marshal, into whose custody the person is committed, an account in writing signed by himself of the offence with which the person so committed is charged; or

- Part I.** (3.) Being in command of a guard, does not, as soon as he is relieved from his guard or duty, or if he is not sooner relieved, within twenty-four hours after a person is committed to his charge, give in writing to the officer to whom he may be ordered to report that person's name and offence so far as known to him, and the name and rank of the officer or other person by whom he was charged, accompanied, if he has received the account above in this section mentioned, by that account,
- ss. 21-23.** shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

1. The prosecutor will have to prove the facts which either show or enable the court to infer that the accused could have brought the person under arrest or in confinement to trial or brought his case before the proper authority for investigation. If these are proved it will lie on the accused to prove the necessity for keeping the person in question in custody.

2. See note to s. 45; and as to entry of charge in guard report, K.R., 485.

Escape from
confinement.

22. Every person subject to military law who commits the following offence; that is to say,

Being in arrest or confinement, or in prison or otherwise in lawful custody, escapes, or attempts to escape, shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

1. As to arrest and confinement, see Ch. IV, paras. 1-17.

2. An escape may be either with or without force or artifice, and either with or without the consent of the custodian.

Offences in relation to Property.

Corrupt
dealings in
respect of
supplies to
forces.

23. Every person subject to military law who commits any of the following offences; that is to say,

- (1.) Connives at the exaction of any exorbitant price for a house or stall let to a sutler; or
- (2.) Lays any duty upon, or takes any fee or advantage in respect of, or is in any way interested in, the sale of provisions or merchandise brought into any garrison, camp, station, barrack, or place, in which he has any command or authority, or the sale or purchase of any provisions or stores for the use of any of His Majesty's forces,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

24. Every soldier who commits any of the following offences ; Part I.
that is to say,

- (1.) Makes away with, or is concerned in making away with s. 24.
Deficiency
in and
injury to
equipment.
(whether by pawning, selling, destruction or otherwise
howsoever) his arms, ammunition, equipments, instruments,
clothing, regimental necessaries, or any horse of which he
has charge ; or
- (2.) Loses by neglect anything before in this section mentioned ;
or
- (3.) Makes away with (whether by pawning, selling, destruction,
or otherwise howsoever) any military decoration granted
to him ; or
- (4.) Wilfully injures anything before in this section mentioned or
any property belonging to a comrade, or to an officer, or to
any regimental mess or band, or to any regimental institu-
tion, or any public property ; or
- (5.) Ill-treats any horse used in the public service,

shall on conviction by court-martial be liable to suffer imprison-
ment, or such less punishment as is in this Act mentioned.

For the purposes of this section, the expression "equipments" in-
cludes any article issued to a soldier for his use, or entrusted to his
care for military purposes.

NOTE.

1. As to a charge under this section, see K.R., 562-566 ; R.P. First
App. Note as to use of Forms of Charges, para. (23), p. 648. As to liability
of civilian pawnbroker, &c., see s. 156.

2. Para. (1) This paragraph shows clearly that, whether arms are
pawned, sold, destroyed, or otherwise made away with, the military offence is
the same, namely, the making away with them ; but the degree of the offence
may differ according as they have been pawned, sold, or destroyed, or other-
wise made away with, and the punishment awarded may vary accordingly.

3. A charge under this or the next paragraph of making away with, &c.,
money or property not mentioned in these paragraphs would be bad, though
if the act amounted to stealing or embezzlement it would be punishable under
s. 18, or if there was proof of any wilful act or neglect, the soldier might be
charged with an offence under s. 40.

4. *Making away with* is distinct from theft, as it applies only to goods in a
man's own possession, and which, therefore, he cannot in law steal. Unless
there is some positive act of pawning, sale, &c., a charge for making away
with should not be preferred, but a charge of losing should be preferred
under para. (2). See K.R., 562, 563 and footnote.

5. *Equipments*. The definition of this word at the end of the section will
include such articles as blankets and barrack furniture when in the personal
charge of an individual soldier.

6. *Clothing* includes clothing supplied to a man in hospital.

7. Para. (2). This is not intended to punish a soldier for a deficiency in
his kit occasioned by accident or mere carelessness rather than by culpable
neglect. On the other hand, the fact that a man has not got his arms, regi-
mental necessaries, &c., at a time when it was his duty to have them, is *prima*
facie evidence of his having lost them by neglect, and the court may call on
him to show that the loss was not occasioned by any fault on his part.

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Part I.
ss. 24-25.

8. In a trial for an offence under this paragraph, the certified copy of the record in the regimental books, on A.F., B 115, shewing that certain articles were deficient, is *prima facie* evidence that they were deficient. If no evidence except A.F., B 115 is obtainable, the prosecution are justified in proceeding on that alone and if no evidence is given on the part of the accused to disprove the fact stated in A.F., B 115, the court may convict. Where, however, the accused gives or produces evidence in contradiction of the declaration of the court of inquiry with regard to any of the articles in question, it will become necessary for the prosecution to produce evidence, if possible, in support of their case in so far as such articles are concerned. For such purpose, the court might, if necessary, grant an adjournment under R.P. 65 (A.); but when for any reasonable cause—such as lapse of time since the deficiency arose, and no witnesses consequently being available to rebut the evidence of or produced by the accused—the court must use their discretion as to their finding in respect of the articles in question. In all cases where A.F., B 115, is not produced at the trial, evidence must be produced to show that at some previous specified date the accused has been in possession of the articles alleged to be deficient.

9. Para. (8). *Military decoration.* See s. 190 (18). Losing by neglect a military decoration is not an offence.

10. Para. (4). *Wilfully injures.* A charge for injuring the property here mentioned must be laid under this section, and not under s. 41. The prosecutor must adduce evidence which will either prove, or enable the court to infer, that the injury was not accidental or done by some other person. If the injury appears to be the result of neglect, it will be for the court to determine whether the neglect was wilful and intended to injure the arms, &c., or was mere carelessness. In the latter case no offence under this section would be committed. The principles to be observed in estimating the loss of or damage to equipment are shown in Equipment Regulations 1909, paras. 99 and 100. See also s. 138 (4) and note and R.P. 11 (F) and note.

11. As to the disqualification of an officer having a personal interest in the case for sitting on a court to try an offence under this paragraph, see R.P. 19 (B) (v) and note.

12. Para. (5). "Horse" includes mule and other beasts of burden or draught. S. 190 (40).

Offences in relation to False Documents and Statements.

Falsifying
official
documents
and false
declara-
tions.

25. Every person subject to military law who commits any of the following offences; that is to say,

- (1.) In any report, return, muster roll, pay list, certificate, book, route, or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy—
 - (a.) Knowingly makes or is privy to the making of any false or fraudulent statement; or
 - (b.) Knowingly makes or is privy to the making of any omission with intent to defraud; or
- (2.) Knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters, or makes away with, any document which it is his duty to preserve or produce; or
- (3.) Where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration, shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

Part I.

ss. 25-27.

1 The court may use their military knowledge in determining any question as to the duty of the accused in a case arising under this section.

2. A trivial error in a report should not, in the absence of fraud or bad faith, be made the ground of a charge under para. (1) (a).

3. In a charge under para. (1) (b) or para. (2) of intent to defraud, it will not be necessary to show an intent to defraud the government or a particular individual, so long as an intent to defraud is shown.

4. The particulars of a charge under para. (2) or (8) should show why it was the accused's duty to preserve the document or to make the declaration; but where the situation of the accused is proved, the court may use their military knowledge to infer his duty; e.g., in the cases dealt with in specimen charge sheets Nos. 62 and 68 (p. 671), the court might use their military knowledge to infer from the fact that the accused was a company quartermaster-serjeant that it was his duty to preserve the documents in question.

5. Para. (8) does not include statements in a summary of evidence or verbal statements.

26. Every person subject to military law who commits any of the following offences; that is to say,

Neglect to report and signing in blank.

(1.) When signing any document relating to pay arms, ammunition, equipments, clothing, regimental necessities, provisions, furniture, bedding, blankets, sheets, utensils, forage, or stores, leaves in blank any material part for which his signature is a voucher; or

(2.) Refuses, or by culpable neglect omits, to make or send a report or return which it is his duty to make or send, shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

Para. (2). The particulars must show that it was the duty of the accused to make the report or return, but where the situation of the accused is proved the court may use their military knowledge to infer his duty. See note 4 to s. 25. If the report or return was one for which the superior had no right to call, there is no punishment for a refusal to make it. The neglect must be something more than mere forgetfulness or mistake.

27. Every person subject to military law who commits any of the following offences; that is to say,

False accusation, or false statement by soldier.

(1.) Being an officer or soldier, makes a false accusation against any other officer or soldier, knowing such accusation to be false; or

(2.) Being an officer or soldier, in making a complaint where he thinks himself wronged, knowingly makes any false statement affecting the character of an officer or soldier, or knowingly and wilfully suppresses any material facts; or

(3.) Being a soldier, falsely states to his commanding officer that he has been guilty of desertion or of fraudulent enlistment

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Part I.
ss. 27-28,

or of desertion from the Navy, or has served in and been discharged from any portion of the regular forces, reserve forces, or auxiliary forces, or the Navy ; or

- (4.) Being a soldier, makes a wilfully false statement to any military officer or justice in respect of the prolongation of furlough,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

1. Para. (1). A mere false statement, not involving an accusation, is not within this paragraph. (See also R.P. 39 Note (3)).

2. Para. (8). *To his commanding officer.* It is not enough for the statement to be made merely to a superior officer; but the term "commanding officer" will include any one whose duty it would be under the K.R. or according to the custom of the service to deal with a charge of desertion or fraudulent enlistment, if it were made against the soldier. A written statement made to any person for the purpose of being laid before the commanding officer is a statement to the commanding officer.

3. Para (4). *Justice.* A justice has power under s. 173 to extend furloughs in certain cases for a month.

Offences in relation to Courts-Martial.

Offences in
relation to
courts-
martial.

28. Every person subject to military law who commits any of the following offences ; that is to say,

- (1.) Being duly summoned or ordered to attend as a witness before a court-martial, makes default in attending ; or
- (2.) Refuses to take an oath or make a solemn declaration legally required by a court-martial to be taken or made ; or
- (3.) Refuses to produce any document in his power or control legally required by a court-martial to be produced by him ; or
- (4.) Refuses, when a witness, to answer any question to which a court-martial may legally require an answer ; or
- (5.) Is guilty of contempt of a court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court,

shall on conviction by a court-martial, other than the court in relation to or before whom the offence was committed, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned :

Provided that where a person subject to military law is guilty of contempt of a court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court, that court, if they think it expedient, instead of the offender being tried by another court-martial, may, by order under the hand of the president, order the offender to be imprisoned, with or without hard labour, or, in the case of a soldier to undergo detention, for a period not exceeding twenty-one days.

NOTE.

Part I.

1. See generally as to summoning and attendance of witnesses, R.P. 14, ss.28-29, 75-78.

2. An offence under this section is not triable by the court in relation to or before whom it was committed, except that for contempt of court by a person subject to military law the court may in any case order him to be imprisoned, or, if he is a soldier, to undergo detention, for not more than 21 days. (See R.P. 59, note.) If the offender is a soldier, he will, as a general rule, be sentenced to detention and not to imprisonment. For form of commitment, see Form U, p. 720.

3. As a rule courts should accept an apology sufficient to vindicate their dignity without resorting to extreme measures

4. A civilian guilty of any of the offences mentioned in this section is punishable by a civil court under s. 126.

5. Para. (1). The court is formed when the members are assembled, even before they are sworn, and anything which would be a contempt after the court was sworn would be a contempt once the members are assembled.

6. Para. (5). The interruption or disturbance need not be caused within the precincts of the court itself, if the circumstances are such as to constitute a contempt of court.

7. Proviso. Ss. 47 (5) 48 (6) which prohibit a regimental or district court-martial from trying an officer, would not exempt an officer guilty of contempt of such a court from liability to be committed to prison by the court under this proviso; but the correct course for the court would almost invariably be to adjourn and report to the proper authority. The summary proceeding for contempt is not a trial, and the offence being as a rule committed in view of the court, opportunity should be given to the offender to offer any explanation of, or excuse for, his conduct, but no further inquiry will be necessary. The order of the court does not require confirmation.

8. To imprison or send to detention for contempt of court a person who is under trial, though legal, requires very exceptional circumstances to justify it; punishment so inflicted must immediately follow the contempt, and cannot be an addition to any sentence after conviction, or be ordered to commence at the date of the expiration of the punishment under the sentence. The court must adjourn until the expiration of the punishment inflicted for the contempt, and must record upon the proceedings the facts which have necessitated the order.

29. Every person subject to military law who commits the following offence; that is to say, False evidence.

When examined on oath or solemn declaration before a court-martial, or any court or officer authorised by this Act to administer an oath, wilfully gives false evidence,

shall be liable on conviction by court-martial to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

1. Accidental or trifling mistakes or discrepancies in evidence will not be made the subject of a charge under this section.

2. The production of the proceedings of the court-martial before which the false swearing is alleged to have taken place is not enough to prove that

Part I. the accused swore as charged. The member of the court who recorded the proceedings, or some person from personal knowledge must prove this. The evidence of one witness without corroboration in some material respect is not sufficient to prove the falsehood of the matter sworn. See Ch. VII, para. 72.

ss. 29-30.

3. This section will be applicable to an accused person who applies to give evidence himself, but a charge should not be preferred against him except in a very flagrant case.

4. As s. 70 (5), and R.P. 124 (H) provide that evidence may be given on oath before a court of inquiry, a person subject to military law who wilfully gives false evidence on oath before such a court is guilty of an offence under this section.

Offences in relation to Billeting.

Offences
relation to
billeting.

30. Every person subject to military law who commits any of the following offences (in this Act referred to as offences in relation to billeting); that is to say,

- (1.) Is guilty of any ill-treatment, by violence, extortion, or making disturbances in billets, of the occupier of a house in which any person or horse is billeted; or
- (2.) Being an officer, refuses or neglects, on complaint and proof of such ill-treatment by any officer or soldier under his command, to cause compensation to be made for the same; or
- (3.) Fails to comply with the provisions of this Act with respect to the payment of the just demands of the person on whom he or any officer or soldier under his command, or his or their horses, have been billeted, or to the making up and transmitting of an account of the money due to such person; or
- (4.) Wilfully demands billets which are not actually required for some person or horse entitled to be billeted; or
- (5.) Takes, or knowingly suffers to be taken, from any person any money or reward for excusing or relieving any person from his liability in respect of the billeting or quartering of officers, soldiers, or horses, or any part of such liability; or
- (6.) Uses or offers any menace to or compulsion on a constable or other civil officer to make him give billets contrary to this Act, or tending to deter or discourage him from performing any part of his duty under the provisions of this Act relating to billeting, or tending to induce him to do anything contrary to his said duty; or
- (7.) Uses or offers any menace to or compulsion on any person tending to oblige him to receive, without his consent, any person or horse not duly billeted upon him in pursuance of the provisions of this Act relating to billeting, or to furnish any accommodation which he is not thereby required to furnish,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned. Part I
ss. 30-31.

NOTE.

1. The provisions as to billeting are contained in Part III, ss. 102-111, and ss. 119-121.

2. See s. 111 as to the jurisdiction of magistrates to deal with officers or soldiers guilty of offences under this section.

3. Para. (4). *Wilfully demands*. The demand constitutes the offence, and it is immaterial whether the billet is actually obtained or not.

Offences in relation to Impressment of Carriages.

31. Every person subject to military law who commits any of the following offences (in this Act referred to as offences in relation to the impressment of carriages); that is to say, Offences in relation to the impressment of carriages, and their attendants.

- (1.) Wilfully demands any carriages, animals, vessels, or aircraft, which are not actually required for the purposes authorised by this Act ; or
- (2.) Fails to comply with the provisions of this Act relating to the impressment of carriages as regards the payment of sums due for carriages or as regards the weighing of the load ; or
- (3.) Constrains any carriage, animal, or vessel furnished in pursuance of the provisions of this Act relating to the impressment of carriages, to travel against the will of the person in charge thereof beyond the proper distance, or to carry against the will of such person any greater weight than it is required by the said provisions to carry ; or
- (4.) Does not discharge as speedily as practicable any carriage, animal, vessel, or aircraft, furnished in pursuance of the provisions of this Act relating to the impressment of carriages ; or
- (5.) Compels the person in charge of any such carriage, animal, vessel, or aircraft, or permits him to be compelled, to take thereon any baggage or stores not entitled to be carried, or, except where the carriage or animal is furnished upon a requisition of emergency, to take thereon any soldier or servant (except such as are sick), or any woman or person ; or
- (6.) Ill-treats or permits such person in charge to be ill-treated ; or
- (7.) Uses or offers any menace to or compulsion on, a constable to make him provide any carriage, animal, vessel, or aircraft, which he is not bound in pursuance of the provisions of this Act relating to the impressment of carriages to provide, or tending to deter or discourage him from performing any part of his duty in relation to the providing of carriages, animals, vessels or aircraft, or tending to induce him to do anything contrary to his said duty ; or

Part I. (8.) Forces any carriage, animal, vessel, or aircraft, from the owner thereof,
 ss. 31-32.

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

1. The provisions as to the impressment of carriages are contained in Part III, ss. 112-121.

2. As to the jurisdiction of magistrates to deal with officers and soldiers guilty of these offences, see s. 118.

3. As respects the references to aircraft in this section, see notes 1 and 2 to s. 115.

Offences in relation to Enlistment.

Enlistment
of soldier or
sailor dis-
charged
with
ignominy
or disgrace.

32. (1.) Every person having become subject to military law, who is discovered to have committed the following offence; that is to say,

Having been discharged with disgrace from any part of His Majesty's forces, or having been dismissed with disgrace from the Navy, has afterwards enlisted in the regular forces without declaring the circumstances of his discharge or dismissal,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

(2.) For the purpose of this section, the expression "discharged with disgrace from any part of His Majesty's forces" means discharged with ignominy, discharged as incorrigible and worthless, discharged for misconduct, or discharged on account of conviction for felony or of a sentence of penal servitude.

NOTE.

1. *Having become subject*, i.e., in the case of the regular forces, having signed the declaration and taken the oath (s. 80 (4) (b)). The wording in this and the next section is different from that in other sections ("every person subject, &c., who commits," &c.), because at the moment of committing the offence the man is not actually subject to military law.

2. *Discharged with disgrace*. It has been ruled that the disgrace must be by reason of some misconduct after and not before the man's previous enlistment.

3. *Felony*. Theft is not necessarily a felony and when the theft which leads to a soldier's discharge is actually a felony the cause of discharge should be specifically worded "in consequence of having been convicted by the civil power for felony" in order that the discharge may come within the definition of "discharged with disgrace." In all cases of this kind, therefore, the copy of the record of civil conviction should be carefully scrutinized in order to ascertain whether the offence was a felony or a misdemeanour. As to what offences are felonies, see table at end of Ch. VII.

4. *Enlisted*. The original or the duplicate attestation paper must be produced at the trial.

5. It is held that the non-declaration is *prima facie* proved by the attestation paper so produced showing answers to have been given inconsistent with such declaration.

6. A man who can show that when discharged he was not (from not having had a discharge certificate given him or for any other reason) made acquainted with the fact that his discharge was for one of the reasons constituting disgrace, ought not to be convicted under this section.

7. Where a person enlists who under s. 52 of the Naval Discipline Act, 1866, has been dismissed but not dismissed with disgrace, the charge should be laid under s. 33.

8. For a corresponding offence in the case of a man enlisting in the Territorial Force, see T.R.F. Act, s. 11. No corresponding offence exists in the case of the Special Reserve; a man enlisting in the Special Reserve after having been discharged with disgrace from another part of His Majesty's Forces, should usually be dealt with under s. 99, but if dealt with while subject to military law the charge may be laid under s. 33.

9. Subs. (2). "Incorrigible and worthless" is no longer a cause of discharge given in K.R. 392.

33. Every person having become subject to military law who is discovered to have committed the following offence; that is to say, **False answers or declarations on enlistment.**

To have made a wilfully false answer to any question set forth in the attestation paper which has been put to him by, or by direction of, the justice before whom he appears for the purpose of being attested,

shall on conviction by court-martial be liable to suffer imprisonment or such less punishment as is in this Act mentioned.

NOTE.

1. See ss. 80, 94 and 99.

2. *Having become subject.* See note 1 to the preceding section.

3. *Attestation paper.* The original or the duplicate must be produced at the trial.

4. The answer must be wilfully false; thus where a man might reasonably have been mistaken as to the fact of his having "served," where, for instance, he was discharged as unfit before he had done duty or worn a uniform, a conviction would not hold good.

5. A false answer as to age should not be made the subject of a charge.

6. Men enlisting after being dismissed from the Navy as "objectionable," or in any other circumstances (except "with disgrace," as to which see s. 32 (1)) will be proceeded against under this section.

7. When a soldier who has improperly enlisted into the regular forces while belonging to the army reserve is tried by court-martial for his offence within three months of the date of his improper enlistment, but not otherwise, the words "and by his enlistment obtained a free kit, value _____," will be added to the particulars of the charge (see specimen Charge 70 B.), and (unless the accused pleads guilty) proved in evidence, in order to enable the court to sentence him to stoppages for the value of the kit as stated in the charge.

8. If the soldier is relegated to the army reserve after conviction by court-martial, the stoppages will be enforced, but if he is held to serve on his last attestation, the sentence of stoppages will be remitted.

Part I.

9. If the soldier is relegated to the army reserve, without trial, within three months of the date of his improper enlistment from the army reserve, he will be required to make good the value of the free kit in accordance with the provisions of the Clothing Regulations.

General
offences in
relation to
enlistment.

34. Every person subject to military law who commits any of the following offences; that is to say,

(1.) Is concerned in the enlistment for service in the regular forces of any man, when he knows or has reasonable cause to believe such man to be so circumstanced that by enlisting he commits an offence against this Act; or

(2.) Wilfully contravenes any enactments or the regulations of the service in any matter relating to the enlistment or attestation of soldiers of the regular forces,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

1. *So circumstanced*, i.e., where he has been discharged with disgrace, so that he commits an offence under s. 32; or where he belongs to the regular forces, or otherwise, so that he is guilty of fraudulent enlistment under s. 13; or where, having previously served, he again enlists without declaring the circumstances of his previous service, so that he commits an offence under s. 33, the attestation being part of the enlistment.

Miscellaneous Military Offences.

Traitorous
words.

35. Every person subject to military law who commits the following offence; that is to say,

Uses traitorous or disloyal words regarding the Sovereign, shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

The words used are to be set out in the charge; they may be either spoken, or written, or published. It is not intended that mere violent or vulgar language used by a man under the influence of liquor should be punished under this section.

Injurious
disclosures.

36. Every person subject to military law who commits the following offence; that is to say,

Whether serving with any of His Majesty's forces or not, without due authority, either verbally or in writing, or by signal or otherwise, discloses the numbers or position of any forces, or any magazines or stores thereof, or any preparations for, or orders relating to, operations or movements of any

forces, at such time and in such manner as in the opinion of the court to have produced effects injurious to His Majesty's service, Part I.
ss. 36-38.

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

1. The unauthorised communication of intelligence to the enemy on active service is punishable under s. 5 (4).

2. Particulars of a charge under this section must show how and when effects injurious to His Majesty's service were produced.

3 As to injurious disclosures by private letters, see note 2 to s. 5; and, as to publishing military information, K.R., 458.

37. Every officer or non-commissioned officer who commits any of the following offences; that is to say, Ill-treating soldier.

(1.) Strikes or otherwise ill-treats any soldier; or

(2.) Having received the pay of any officer or soldier, unlawfully detains or unlawfully refuses to pay the same when due, shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a non-commissioned officer, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

1. Para. (1). Forcing or striking a soldier when acting as sentinel is punishable under s. 6 (1) (d) more severely than the mere striking a soldier.

2. As the word "soldier" includes N.O.O., it follows that the offence of one N.O.O. striking or ill-treating another who is not his superior falls within this section. Striking a superior officer is dealt with under s. 8.

38. Every person subject to military law who commits any of the following offences; that is to say, Duelling and attempting to commit suicide.

(1.) Fights, or promotes or is concerned in, or connives at, fighting a duel; or

(2.) Attempts to commit suicide,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

1. An officer carrying a challenge is punishable under para. (1).

2. If death ensued, the surviving principal in the duel and both the seconds might be tried and convicted for murder.

Part I.

ss. 38-40.

3. As to attempts to commit suicide, see note (b) on p. 100. A man should not be charged with attempted suicide unless the circumstances of the case make it clear that he seriously intended to take his life. A medical officer will attend the taking of the summary of evidence, and will invariably give oral evidence, which should include his opinion as to the state of mind of the accused at the time of the commission of the alleged offence.

Refusal to deliver to civil power officers and soldiers accused of civil offences.

39. Every person subject to military law who commits any of the following offences; that is to say,

On application being made to him, neglects or refuses to deliver over to the civil magistrate, or to assist in the lawful apprehension of, any officer or soldier accused of an offence punishable by a civil court,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

NOTE.

1. This offence may be committed not only in the United Kingdom, but in any colony or possession where there is a civilian judicature. An officer or soldier to whom an application is made under this section may require to see the warrant or other authority for the delivery over or apprehension; and if none exists, no offence is committed by refusing the demand.

2. As to the cases in which a soldier of the regular forces is exempt from civil process, see s. 144 (1) and (2).

Conduct to prejudice of military discipline.

40. Every person subject to military law who commits any of the following offences; that is to say,

Is guilty of any act, conduct, disorder, or neglect, to the prejudice of good order and military discipline,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned. Provided that no person shall be charged under this section in respect of any offence for which special provision is made in any other part of this Act, and which is not a civil offence; nevertheless the conviction of a person so charged shall not be invalid by reason only of the charge being in contravention of this proviso, unless it appears that injustice has been done to the person charged, by reason of such contravention; but the responsibility of any officer for that contravention shall not be removed by the validity of the conviction.

NOTE.

1. See Ch. III, para. 82.

2. To sustain a charge under this section it is absolutely necessary that the charge should recite the words of the Act. That is to say, there must be charged an "act" or "conduct," or "disorder," or "neglect," as the case may be, "to the prejudice of good order and military discipline." See e.g. specimen charge sheets Nos. 75 to 77, p. 674

3. But the mere use of these words as a description of certain conduct does not warrant a court in assuming that such conduct is legally an offence. A court is not warranted in convicting unless of opinion that the conduct charged was to the prejudice both of good order and of military discipline, having regard to the conduct itself and to the circumstances in which it took place. It is only in such a case that an offence of a non-military character falls within this section. Other offences of a non-military character, if tried at all under the Act, should be tried under s. 41. Part I.
ss. 40-41.

4. Neglect must be wilful or culpable, and not merely arising from ordinary forgetfulness or error of judgment, or inadvertence; and where the use of certain words regarding superiors is made the subject of a charge under this section, the words must have been said meaningly, i.e., with a guilty intent.

5. Attempts to commit most of the purely military offences under the Act are triable under this section, except where such attempts are (e.g., an attempt to desert) specifically provided for.

6. A charge of displaying the white flag, where the evidence is not sufficient to justify a charge under ss. 4 or 5, will be laid under this section. A charge of improperly possessing a comrade's property, where there is no evidence of theft, will also be laid under this section. K.R., 555 and 556 and Oh. III, para. 23.

Offences punishable by ordinary Law.

41. Subject to such regulations for the purpose of preventing interference with the jurisdiction of the civil courts as are in this Act after mentioned, every person who, whilst he is subject to military law, shall commit any of the offences in this section mentioned, shall be deemed to be guilty of an offence against military law, and, if charged under this section with any such offence (in this Act referred to as a civil offence), shall be liable to be tried by court-martial, and on conviction to be punished as follows; that is to say, Offences
punishable
by ordinary
law of
England.

- (1.) If he is convicted of treason, be liable to suffer death, or such less punishment as is in this Act mentioned; and
- (2.) If he is convicted of murder, be liable to suffer death; and
- (3.) If he is convicted of manslaughter or treason-felony, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and
- (4.) If he is convicted of rape, be liable to suffer penal servitude or such less punishment as is in this Act mentioned; and
- (5.) If he is convicted of any offence not before in this section particularly specified, which when committed in England is punishable by the law of England, be liable whether the offence is committed in England or elsewhere, either to suffer such punishment as might be awarded to him in pursuance of this Act in respect of an act to the prejudice of good order and military discipline, or to suffer any punishment assigned for such offence by the law of England.

Part I. Provided as follows :—

- ss. 41-42. (a.) A person subject to military law shall not be tried by court-martial for treason, murder, manslaughter, treason-felony, or rape, committed in the United Kingdom, and shall not be tried by court-martial for treason, murder, manslaughter, treason-felony, or rape, committed in any place within His Majesty's dominions, other than the United Kingdom and Gibraltar, unless such person at the time he committed the offence was on active service, or such place is more than one hundred miles as measured in a straight line from any city or town in which the offender can be tried for such offence by a competent civil court :
- (b.) A person subject to military law when in His Majesty's dominions may be tried by any competent civil court for any offence for which he would be triable if he were not subject to military law.

NOTE.

1. See Ch. VII generally as to offences punishable by the ordinary law, and as to the cases in which the jurisdiction given by this section should be exercised, see paras. 1-3 of that chapter. Subject to proviso (a) this section in effect gives absolute jurisdiction to a court-martial to try a person subject to military law for any civil offence.

2. *Subject to such regulations, &c.* See provisos (a) and (b).

3. For definition of active service, see s. 189.

4. Where an offence specified in the Act is also a civil offence (e.g., ss. 17, 18), an attempt to commit that offence can under (5) be ordinarily tried by court-martial, because by English law an attempt to commit a civil offence is ordinarily in itself an offence. See Ch. VII, para. 28.

5. See note to R.P. 11 (A)-(O), as to the form of charges under this section. See also specimen charge sheets, 78-83; pp. 674-675.

6. As to reference of cases of fraud to the judge advocate general, see note 12 to s. 17.

Redress of Wrongs.

Mode of
complaint
by officer.

42. If an officer thinks himself wronged by his commanding officer, and, on due application made to him, does not receive the redress to which he may consider himself entitled, he may complain to the Army Council in order to obtain justice, who are hereby required to examine into such complaint, and through a Secretary of State make their report to His Majesty in order to receive the directions of His Majesty thereon.

NOTE.

1. It is the custom of the service to forward every complaint through the officer commanding the unit; and an officer would not be justified in deviating from this course, unless the commanding officer should refuse, or unreasonably delay, to forward it. An officer, on addressing himself

directly to the general in command, should apprise his commanding officer of his doing so, and must observe in the channel of approach to the Army Council each intermediate gradation of command.

Part I.
—
ss. 42-43.

2. Although the Army Council are required to examine into the complaint and report to His Majesty, they are not debarred from expressing their own view of the case. Even an expression of opinion by the intermediate general officer will in many cases suffice to render further steps unnecessary. An officer should not be disposed to push to extremes his right to bring his complaint before the Sovereign.

3. This section does not limit the right of the Sovereign to receive complaints, but only controls the manner in which officers thinking themselves wronged are to approach the Sovereign. See K.R., 128, 439.

4. A false accusation or statement made on preferring a complaint under this section is punishable under s. 27 (1) (2).

43. If any soldier thinks himself wronged in any matter by any officer other than his captain, or by any soldier, he may complain thereof to his captain, and if he thinks himself wronged by his captain, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to his commanding officer, and if he thinks himself wronged by his commanding officer, either in respect of his complaint not being redressed, or in respect of any other matter, he may complain thereof to the prescribed general officer, or, in the case of a soldier serving in India, to such officer as the Commander-in-Chief of the forces in India with the approval of the Governor-General of India in Council may appoint; and every officer to whom a complaint is made in pursuance of this section shall cause such complaint to be inquired into, and shall, if on inquiry he is satisfied of the justice of the complaint so made, take such steps as may be necessary for giving full redress to the complainant in respect of the matter complained of.

Mode of
complaint
by soldier.

NOTE.

1. The mode of preferring a complaint is set forth in the form in the soldier's small book. Complaints may be made respecting any matter, but can be made by an individual only. The combined complaint of several can never be permissible, but should not, if well founded, be treated as mutinous, where it is plain that the only object of those making the complaint is to procure redress of the matters by which they think themselves wronged. A complaint cannot be legitimately preferred to a superior officer except in the regular course defined by this section,—that is to say, first to the captain and then to the commanding officer. It is only where the captain refuses or unnecessarily delays to redress or forward the complaint that a direct application can be made to the commanding officer; and it is only if the commanding officer similarly refuses or delays, that a direct application can be made to the proper general officer. The captain, in the one case, and the commanding officer in the other, ought to be informed of the application being made to his superior. See K.R., 439.

2. *Prescribed General Officer*: see R.P. 126 (E).

The commanding officer to whom the complaint is made will usually be the commanding officer as defined in R.P. 129, but if the complaint is made

Part I. to any other officer, that officer should receive it and should at once forward it to the commanding officer of the complaining soldier as defined by ss. 43-44, that Rule, and the complaint will then be dealt with as properly made.

4. The only exception to the above rule as to the course of complaints is on occasion of the question which general officers commanding brigades, divisions, districts or commands at their yearly inspections are required to put to units, as to whether there are any complaints. See K.R., 128.

5. A soldier cannot in any way be punished for making a complaint under this section, whether it be frivolous or not, and he ought not, for making a complaint, to be treated in any way with harshness or suspicion.

6. A false accusation or statement made on preferring a complaint under this section is punishable under s. 27 (1) (2).

7. It has been held that as between persons both subject to military law the mode of redress given by this section is the only one open. See Ch. VIII, para. 71.

Punishments.

Scale of punishments by courts-martial.

44. Punishments may be inflicted in respect of offences committed by persons subject to military law and convicted by courts-martial,—

In the case of officers, according to the scale following :

- a. Death.
- b. Penal servitude for a term not less than three years.
- c. Imprisonment, with or without hard labour, for a term not exceeding two years.
- d. C cashiering.
- e. Dismissal from His Majesty's service.
- f. Forfeiture, in the prescribed manner, of seniority of rank either in the army or in the corps to which the offender belongs, or in both.
- g. Reprimand, or severe reprimand.

In the case of soldiers, according to the scale following :

- h. Death.
- j. Penal servitude for a term not less than three years.
- k. Imprisonment, with or without hard labour, for a term not exceeding two years.
- kk. Detention for a term not exceeding two years.
- l. Discharge with ignominy from His Majesty's service.
- m. In the case of a non-commissioned officer, forfeiture, in the prescribed manner, of seniority of rank, or reduction to a lower grade, or to the ranks.
- n. Forfeitures, fines, and stoppages.

Provided that—

- (1.) Where in respect of any offence under this Act there is specified a particular punishment, or such less punishment as is in this Act mentioned, there may be awarded in respect of that offence, instead of such particular punishment (but subject to the other regulations of this Act as to punishments, and regard being had to the nature and

- degree of the offence) any one punishment lower in the above scales than the particular punishment.
- (1A.) For the purposes of commutation and revision of punishment, detention shall not be deemed to be a less punishment than imprisonment if the term of detention is longer than the term of imprisonment.
 - (2.) An officer shall be sentenced to be cashiered before he is sentenced to penal servitude or imprisonment.
 - (3.) An officer when sentenced to forfeiture of seniority of rank may also be sentenced to reprimand or severe reprimand.
 - (4.) A soldier when sentenced to penal servitude or imprisonment may, in addition thereto, be sentenced to be discharged with ignominy from His Majesty's service.
 - (5.) Where a soldier on active service is guilty of any offence, it shall be lawful for a court-martial to award for that offence such field punishment, other than flogging, as may be directed by rules to be made from time to time by a Secretary of State, and such field punishment shall be of the character of personal restraint or of hard labour, but shall not be of a nature to cause injury to life or limb.
 - (6.) In addition to or without any other punishment in respect of an offence committed by a soldier on active service, it shall be lawful for a court-martial to order that the offender forfeit all ordinary pay for a period commencing on the day of the sentence and not exceeding three months.

* * * * *

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- (9.) All rules with respect to field punishment made in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if Parliament be not then sitting, as soon as practicable after the beginning of the then next session of Parliament.
- (10.) For the purpose of commutation of punishment the field punishment above mentioned shall be deemed to stand in the scale of punishments next below detention.
- (11.) In addition to, or without, any other punishment in respect of any offence, an offender convicted by court-martial may be subjected to forfeiture of any deferred pay, service towards pension, military decoration or military reward, in such manner as may for the time being be provided by Royal Warrant, but shall not, save as may be provided by Royal Warrant, be liable to any forfeiture under the Regimental Debts Act, 1893, or under any Act relating to the military savings banks, or any regulations made in pursuance of either of the above-mentioned Acts.

Part I. (12.) In addition to, or without, any other punishment in respect of any offence, an offender may be sentenced by court-martial to any deduction authorised by this Act to be made from his ordinary pay.

s. 44.

(13.) No officer or non-commissioned officer shall, under or by virtue of any power or authority derived from any foreign potentate or ruler, inflict, or cause to be inflicted, on any person subject to military law under this Act, for or in respect of any offence against such law, any punishment not authorised by this Act.

NOTES.

1. *Penal Servitude.* See as to the execution of a sentence of penal servitude, ss. 58-62, 68, 131, and notes.

2. *Imprisonment.* As to rules for awarding terms of imprisonment in days, months, or years, as the case may require, see K.R., 585. As to execution of a sentence, see ss. 63-67, 131-135, and notes; and as to the date from which a sentence is to be reckoned and the limitation of sentences of imprisonment, see s. 68.

3. An offender does not cease to be subject to the Act while undergoing a sentence of penal servitude, imprisonment, or detention, though he has been discharged or dismissed from the service. s. 158 (2).

4. *Forfeiture . . . of seniority of rank.* See R.P. 47.

5. *Reprimand or severe reprimand.* Reprimands vary from a public and severe reprimand to a private reprimand. A public reprimand may be administered at the head of a battalion, regiment, brigade, or division, paraded for the purpose; or it may be conveyed in command, &c., orders. A private reprimand is usually given by the commanding officer of a battalion, regiment, or brigade, at his quarters, in the presence of the officers of the regiment, or of the officers of equal and superior rank only, or simply in the presence of a staff officer. The manner and time of delivering the reprimand is appointed by the confirming authority.

6. For the additional punishment of deduction from pay, see proviso (12) and ss. 137, 138.

7. *Imprisonment.* The introduction in 1906 of the punishment of detention has the effect of limiting very much the cases in which a soldier will be sentenced to imprisonment. A soldier convicted by court-martial of an offence under ss. 17, 18 (4), 18 (5), or 41, whom it is not desired to retain in the Army, should be sentenced to imprisonment, but in case he is convicted of such offence, or of any other military offence, and it is desired to retain him in the Army, he should be sentenced to detention. If, however, on account of previous bad character, or for any other reason it is considered undesirable that he should rejoin the colours after serving his sentence, the court still have power to sentence him to imprisonment.

8. *Detention.* See Ch. III, para. 36, and Ch. V, para. 108.

9. As to rules for awarding terms of detention by a commanding officer, see notes to R.P. 6 and K.R. 494 (iv); and as to execution of a sentence of detention, see ss 68-66.

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Insert as note 20A at foot of page 419 :—

20A. Proviso (1B). Except in cases under s. 41 (5) for which a maximum sentence of penal servitude has been fixed by law (see table at end of Chap. VII), it is competent for a court-martial, in cases where it is authorised to impose a term of penal servitude, to award penal servitude for life or any term not less than three years.

By virtue of this proviso a man cannot be subjected to imprisonment or detention, whether under one or more sentences, for more than two consecutive years. (See also K.R. 646). Any period passed in military custody under a sentence or in imprisonment by the civil power between two periods of imprisonment, or of detention, or between a period of imprisonment and one of detention (or *vice versa*), is to be reckoned as part of the terms of confinement.

The proviso does not apply to a fresh offence committed after release.

A man whose sentence has expired is not "in custody" whilst returning to his unit; also, if after rejoining he commits an offence and is re-arrested, he is in custody, but not "under sentence." Both these periods break the continuity, and the court which tries him can award two years for the new offence.

Escape from prison or detention, even for a single day, breaks the continuity of the confinement, and time must be calculated afresh from the date on which the man is returned to prison, detention barrack, or military custody. If, after re-capture, he is kept in military custody to be tried for some fresh offence (*e.g.*, committed whilst at large), it must be noted that he is not merely "in arrest, pending trial," but must be regarded as serving his original term (*c.f.*, s. 63). Therefore, on his trial he can receive at most only two years, less the period spent in custody since his re-arrest.

See K.R. 555 (iv) for provisions as to consecutive awards of detention by a C.O.; the same provisions are held to be applicable also to awards of field punishment (which is not expressly mentioned).

The first part of the document is a letter from the President of the United States to the President of the Senate, dated January 1, 1877. The letter is signed by Rutherford B. Hayes and is addressed to Charles Schreyer. The letter is a copy of a letter that was sent to the President of the Senate by the President of the United States. The letter is a copy of a letter that was sent to the President of the Senate by the President of the United States. The letter is a copy of a letter that was sent to the President of the Senate by the President of the United States.

10 A soldier sentenced to three months' detention, or upwards, is liable in commutation thereof, either wholly or partly, to general service, and to transfer to any corps. s. 83 (7).

11. *Reduction.* Service in the lower grade will reckon from the date of signing the original sentence, whether the punishment in question was a revised sentence, or a mitigation by the confirming officer from a more severe sentence. As to the reduction of warrant officers, see s. 182 (2) (3), and of warrant officers in the Indian forces, s. 180 (2) (f).

12. *Forfeiture in the prescribed manner of seniority of rank.* See R.P. 47. The power to forfeit seniority of rank in the case of N.C.Os. is intended to meet cases in which reduction to a lower grade would be too severe. As indicating the relative severity of a sentence of reduction, and one of forfeiture of seniority, it is to be noted that to be eligible for a full pension as corporal, or as serjeant, or any higher rank of N.C.O., it is necessary to have 12 years' continuous service as corporal or serjeant (as the case may require) on completing 21 years' service. On the other hand, the effect of a sentence of forfeiture of seniority of rank in the case of a N.C.O. is that his seniority in the rank he holds is alone affected. Thus if a serjeant who was promoted to that rank on the 19th April, 1910, were sentenced to take rank and precedence as if his appointment to that rank bore date the 21st June, 1912, he would on the latter date, while having only one day's service to count for seniority, still count continuous service for all other purposes in the rank of serjeant from the 19th April, 1910.

13. *Forfeitures.* i.e., forfeitures of service towards discharge, see ss. 79 (2), 84, 161 (which, however, are consequential and cannot be awarded by sentence of court-martial), and the forfeitures mentioned by provisos (6), (11), and (12) of this section. The latter include forfeiture of good conduct medals, badges, decorations (other than the Victoria Cross), and military rewards.

14. When a G.C.M. or D.C.M. sentence an offender who is a soldier to forfeit any medal or decoration such sentence entails the forfeiture of any annuity or gratuity attached thereto, and the court should not include the forfeiture of such annuity or gratuity in their sentence (P.W. 1238). Similarly, a general or district court-martial should not sentence a soldier to forfeiture of medals or decorations when such forfeiture is consequential on his conviction. (See P.W. 1236.)

15. A regimental court-martial cannot award forfeitures of medals, &c. An officer, however, who is tried by court-martial does not forfeit any medal or decoration in his possession unless such forfeiture forms part of the sentence.

16. Forfeitures may be more severe in effect than a short term of imprisonment or detention.

17. As to restoration of forfeited service, see the provisos to ss. 79 (2) and 161, and note 2 to s. 84.

18. *Fines.* These are not authorised to be imposed for any offence except drunkenness, and cannot exceed, if imposed by a court-martial, one pound, or, if imposed by a commanding officer, ten shillings: ss. 19, 46 (2) (b) and K.R. 512.

19. *Stoppages.* See proviso (12). S. 138 sets out the cases in which penal deductions or stoppages may be made from the ordinary pay of the soldier; and s. 139 provides for their remission.

20. Proviso (1.) *Subject to the other regulations of this Act, &c., provisos (2), (3), (4), (6), (11), and (12) specify the particular instances in which more than one punishment may be given.*

Part I. 21. Proviso (2.) Care must be taken to comply with this provision : a sentence to penal servitude and to be cashiered is incorrect as cashiering
 ss. 44-45 should precede penal servitude.

22. Proviso (4.) It will be observed that this does not apply in the case of a soldier sentenced to detention.

23. Proviso (5.) For definition of active service, see s. 189.

24. The following conditions are essential to the legality of field punishments :—

The offender must be on active service.

The punishment must be in conformity with the Field Punishment Rules ; see the Rules at p. 721.

25. Proviso (6.) Forfeiture of pay under this provision can only be ordered in case of an offence committed by a soldier on active service. If the soldier is at the time liable to any penal deductions from pay, the order only affects the balance of the pay remaining after those deductions : see section 138, proviso (c).

26. Proviso (11.) As to these forfeitures, see P.W., arts. 765, 1114, 1187, 1188, 1236, 1238.

27. Proviso (12.) *Authorised by this Act.* See ss. 187 and 188.

ARREST AND TRIAL.

Arrest.

Custody of
persons
charged
with
offences.

45. The following regulations shall be enacted with respect to persons subject to military law when charged with offences punishable under this Act :

- (1.) Every person subject to military law when so charged may be taken into military custody : Provided, that in every case where any officer or soldier not on active service remains in such military custody for a longer period than eight days without a court-martial for his trial being ordered to assemble, a special report of the necessity for further delay shall be made by his commanding officer in manner prescribed ; and a similar report shall be forwarded every eight days until a court-martial is assembled or the officer or soldier is released from custody :
- (2.) Military custody means, according to the usages of the service, the putting the offender under arrest or the putting him in confinement :
- (3.) An officer may order into military custody an officer of inferior rank or any soldier, and any non-commissioned officer may order into military custody any soldier, and an officer may order into military custody an officer (though he be of higher rank) engaged in a quarrel, fray, or disorder ; and any such order shall be obeyed, notwithstanding the person giving the order and the person in respect of whom the order is given do not belong to the same corps, arm, or branch of the service :
- (4.) An officer or non-commissioned officer commanding a guard, or a provost-marshal or assistant provost-marshal, shall not refuse to receive or keep any person who is committed

to his custody by any officer or non-commissioned officer, but it shall be the duty of the officer or non-commissioned officer who commits any person into custody, to deliver at the time of such committal, or as soon as practicable, and in every case within twenty-four hours thereafter, to the officer, non-commissioned officer, provost-marshal, or assistant provost-marshal into whose custody the person is committed, an account in writing, signed by himself, of the offence with which the person so committed is charged :

- (5.) The charge made against every person taken into military custody shall, without unnecessary delay, be investigated by the proper military authority, and, as soon as may be, either proceedings shall be taken for punishing the offence, or such person shall be discharged from custody.

NOTE.

1. It will be convenient to give a summary of the provisions for preventing a person from being kept in custody without his case being dealt with by the proper authority.

2. An officer or N.C.O. who commits a person into custody should sign and deliver to the officer or N.C.O. into whose custody such person is committed, a written account (termed "the charge") of the offence with which the person so committed is charged. He should, if possible, do this at the time of committal, but at any rate must do so within 24 hours after that time. See ss. 21 (2), 45 (4). If the "charge" is not delivered at the time of committal, a verbal report to the same effect is to be made (K.R., 463), but non-delivery of the "charge" will not excuse a refusal to receive an offender into custody. The officer or N.C.O. into whose custody the accused is committed, must give in writing to the officer to whom he may be ordered to report the name and offence of the accused, as far as known to him, and the name and rank of the person by whom he is charged (s. 21 (3)). This report must be made as soon as he is relieved from his guard or duty, if relieved within 24 hours after the committal, and in any case within those 24 hours. It must be accompanied by the "charge," if he has received it; and should be made by an entry in the guard report, and he should send the "charge," or a copy thereof, to the commanding officer of the accused (K.R., 463). If he has not received the "charge," he must mention the circumstance in his report, and if the "charge" is not delivered within 24 hours, the commander of the guard must make a further report to the superior authority, who, if evidence sufficient to justify the retention in custody of the accused is not forthcoming, will, at the expiration of 48 hours from the time of committal, order him to be released (K.R., 463). A commanding officer who has received the report of the committal of an accused person becomes responsible (s. 45 (5)) for having the case investigated without delay. This delay, under R.P. 2, is not to exceed 48 hours without the case being reported to the officer to whom application would be made to convene a court-martial for the trial of the person charged.

3. If eight days elapse without the case being disposed of summarily and without a court-martial being ordered to assemble, the special report required by section 45 (1), as explained by R.P. 1, must be made, and a similar report is required to be forwarded every eight days; and this report will have to be

Part I. sent by the commanding officer, even though the fault of the delay lies with the officer to whom the report is to be made. This special report is not required on active service. If unnecessary delay occurs in convening a general or district court-martial, a report has to be made to the Army Council. R.P. 17 (O).

ss. 45-46.

4. When an officer is placed in arrest by his commanding officer, the commanding officer should immediately report the case to superior authority.

5. With reference to the above observations, it must be recollected that in reckoning the time fixed by the R.P., Sunday, Good Friday, and Christmas Day are, as a general rule, excluded (R.P. 135 (A)), but this is not the case in reckoning the days fixed by sections of the Act, e.g., ss. 21, 45 (1).

6. Para. (1). See generally as to Arrest and Confinement Ch. IV, paras. 1-17; and K.R., 463-482.

7. *Special Report.* See R.P. 1.

8. Para. (2). *Military custody.* This expression is here restricted by the opening words of the section to the military custody of persons when charged with offences, and does not apply to persons in military custody undergoing sentence. See K.R., 465, 473.

9. Para. (5). *Proper military authority.* All charges against N.C.O.s. and soldiers must now be investigated in the first instance by the company, &c., commander, who, in all cases where a private soldier is concerned, and in certain cases where a N.C.O. is concerned, may either dispose of the case himself or reserve it for the commanding officer (see K.R., 484, 499); and, where the case is so reserved, the commanding officer must give the decision under s. 46 (1).

10. The commanding officer in this section means the commanding officer as defined by R.P., 129; see K.R., 456.

11. As to the conduct of the investigation, see Ch. IV, paras. 18-30. R.P. 12-8 and notes. K.R., 483-492.

12. As to offences in relation to this section, see s. 21.

Power of Commanding Officer.

Power of
command-
ing officer.

46. (1.) The commanding officer shall, upon an investigation being had of a charge made against a person subject to military law under his command of having committed an offence under this Act, dismiss the charge if he in his discretion thinks that it ought not to be proceeded with; but where he thinks the charge ought to be proceeded with he may take steps for bringing the offender to a court-martial, or, in the case of a soldier, may deal with the case summarily.

(2.) Where he deals with a case summarily, he may,—

(a.) Award to the offender detention for any period not exceeding twenty-eight days; and

(b.) In the case of the offence of drunkenness, may order the offender to pay a fine not exceeding ten shillings, either in addition to or without detention; and

(c.) In addition to or without any other punishment may order the offender to suffer any deduction from his ordinary pay authorised by this Act to be made by the commanding officer; and

(d.) In the case of an offence by a soldier (not being a non-commissioned officer) on active service, may award to the offender field punishment within the meaning of section forty-four of this Act for any period not exceeding twenty-eight days, and may in addition to or without any other punishment order that the offender forfeit all ordinary pay for a period commencing on the day of the sentence and not exceeding twenty-eight days.

(3.) Where the charge is against a soldier for drunkenness the commanding officer shall deal with the case summarily, unless the offence was committed on active service or on duty, or after the offender was warned for duty, or unless by reason of the drunkenness the offender was found unfit for duty, or unless the soldier has been guilty of drunkenness on not less than four occasions in the preceding twelve months, but nothing in this sub-section shall affect the jurisdiction of any court-martial, or the right of the soldier to be tried by a district court-martial.

(4.) [This subsection was repealed by A.A.A. 1910.]

(5.) Provided that where detention is awarded for absence without leave, the commanding officer shall have regard to the number of days during which the offender has been absent, and in no case shall the term of detention awarded, if exceeding seven days, exceed the term of absence.

(6.) Provided that in every case where the commanding officer has power to deal with the case summarily, the accused person may demand that the evidence against him should be taken on oath, and the same oath or solemn declaration as that required to be taken by witnesses before a court-martial shall be administered to each witness in such case.

(7.) An offender shall not be liable to be tried by court-martial for any offence which has been dealt with summarily by his commanding officer, and shall not be liable to be punished by his commanding officer for any offence of which he has been acquitted or convicted by a competent civil court or by court-martial.

(8.) Where a commanding officer has power to deal with a case summarily under this section, and, after hearing the evidence, considers that he may so deal with the case, he shall, in every case where the award or finding involves a forfeiture of pay, and in every other case unless he awards one of the minor punishments referred to in this section, ask the soldier charged whether he desires to be dealt with summarily or to be tried by a district court-martial, and, if the soldier elects to be tried by a district court-martial, the commanding officer shall take steps for bringing him to trial by a district court-martial, but otherwise shall proceed to deal with the case summarily.

(9.) Nothing in this section shall prejudice the power of a commanding officer to award such minor punishments as he is for the

Part I. time being authorised to award, so, however, that a minor punishment shall not be awarded for any offence for which detention exceeding seven days is awarded.

s. 46.

NOTE.

1. See Ch. IV, paras. 31-38; R.P., 2-7, and notes; K.R. 487-499. As to meaning of *Commanding Officer*, see R.P., 129 and note; K.R., 456.

2. The discretion of a commanding officer in acting under this section is regulated by K.R., 487-492; see also R.P., 4 (B.) and note; and an officer not under the rank of brigadier-general may, within two years of the award, order the commanding officer, where the offender has not completed the sentence, to cancel or mitigate the award, if the soldier is at the time still undergoing the punishment, or if the sentence has been completed, to alter the record of the punishment awarded; after the lapse of two years, any such action, if necessary, must be taken by the Army Council. K.R., 507.

3. Subs. (1). *In the case of a soldier.* "Soldier" includes N.C.O., and "non-commissioned officer" includes acting N.C.O., whether in receipt of pay as such or not; s. 190 (5), (6). But the obligation on a commanding officer to deal summarily with a soldier charged with drunkenness does not apply to N.C.O.s, s. 183 (1); and K.R., 499, forbids N.C.O.s. (including acting N.C.O.s.) to be subjected to summary punishment; but a N.C.O. may be severely reprimanded, reprimanded or admonished, (K.R., 493, (vi) and (vii) and 499), and an acting N.C.O. may be ordered to revert to his permanent rank.

4. The power of a commanding officer under this section to deal summarily with a soldier does not extend to a warrant officer (s. 182 (1)), nor to a person subject to military law who does not belong to His Majesty's forces, s. 184 (2).

5. Subs. (2). In addition to the punishments specified in this sub-section a commanding officer may inflict such "minor punishments" as are specified in K.R., 493; (see subs. (9)). Note however the special provisions of that Regulation as to N.C.O.s.

6. Para. (a). By A.A.A., 1910, the amount of detention which may be awarded by commanding officers was increased from 14 days in ordinary cases, and 21 days in case of absence without leave, to 28 days in all cases. Detention awarded by a commanding officer up to seven days will be awarded in hours (R.P., 6, and note), and will as a rule be undergone in a branch detention barracks. For form of commitment, see R.P., App. III. Form G, p. 713, and as to detention barracks generally, K.R., 645-660. As to commencement of term of detention, see R.P., 6 and K.R. 494 (iv). It must be observed that a commanding officer cannot inflict a sentence of imprisonment.

7. Para. (b). For scale of fines for drunkenness, mode of recovery, &c., see K.R., 512, 513, and as to punishment for simple drunkenness, 497.

8. Para. (c). *Deduction from ordinary pay.* See ss. 138-140 and notes.

9. Subs. (3). Certain cases of drunkenness a commanding officer must deal with summarily, but he may, if he thinks fit, deal summarily with any case of drunkenness, though the offence was committed under the special circumstances mentioned in this sub-section. See K.R., 509. The obligation to deal with cases of drunkenness summarily does not apply where the offender is a N.C.O. s. 183 (1).

10. Subs. (7). *Dealt with summarily.* If a commanding officer, contrary to K.R., 487 (which requires him to refer to superior authority certain offences), through inadvertence and with a full knowledge of the facts,

deals with any offence summarily, his award is legal and the offender cannot be tried by court-martial for that offence.

11. *Acquitted or convicted by a civil court or a court-martial.* See note to s. 157. Nor can a man acquitted or convicted of an offence by a civil court or court-martial be tried by court-martial for the same offence; ss. 157, 162 (6). Where a soldier has been acquitted or convicted or summarily punished for an offence which is substantially the same as some other offence, he ought not to be summarily punished by his commanding officer or tried for such other offence. If, e.g., he has been acquitted, or convicted of, or summarily punished for, absence without leave, and the absence amounted to desertion, he cannot be afterwards tried for desertion. Nor can a man convicted by a court-martial of an offence be afterwards sentenced by his commanding officer to stoppages for damage caused by that offence.

12. Subs. (8). If the commanding officer omits to ask the soldier the question prescribed by this sub-section, the soldier can claim his right of trial by court-martial at any time on the same day before the hour fixed for the commitment and release of soldiers under sentence: R.P. 7; and a soldier is to be given on the following day an opportunity of reconsidering his decision to be tried by court-martial: K.R., 496. Where a soldier elects to be tried he may, if his C.O. thinks the circumstances of the case warrant it, be at once released from arrest pending trial. K.R., 490A.

13. A N.C.O. or soldier remanded by his commanding officer to a regimental court-martial, cannot legally claim a district court-martial under this section, but a commanding officer should use his discretion in dealing with such a request.

14. Where a case of absence without leave is dealt with summarily by a company, &c., commander acting as commanding officer, he must of course comply with the provisions of this sub-section, and should in every case, before awarding any punishment, inform the soldier of the number of days pay he forfeits under the Pay Warrant in respect of his absence, and ask him whether he wishes to be tried by district court-martial.

15. Subs. (9). *Minor punishment.* See K.R., 498-501 and note 5 to this section.

16. R.P. 6 (B) prohibits a commanding officer from increasing a punishment after he has once made his award, which is complete when the man has quitted his presence. This rule applies in the case of minor as well as of other punishments. But a commanding officer can at any time before the punishment has been completed mitigate or remit a minor or a summary punishment. As to entry of his award or decision see K.R., 485, 507.

Courts-Martial.

PRELIMINARY NOTE.

The principal enactments which govern the convening, composition, and procedure of courts-martial are contained in this group of sections (ss. 47-56). The remainder of the law will be found in the supplemental provisions of the Act as to courts-martial (ss. 122-180) and as to evidence (ss. 163-165) and in the rules of procedure. S. 49 provides for the convening of the exceptional tribunal of a field general court-martial to try offences committed on active service, and offences against the inhabitants of, or residents in, countries beyond the seas, which it is not practicable to try by an ordinary court. Certain questions relating to jurisdiction of courts-martial are dealt with in ss. 157-162.

See Ch. V for general explanation of the constitution and practice of courts-martial; and for details see the rules of procedure and notes. K.R., 487,

Part I. specifies the offences which a commanding officer is empowered, without reference to superior authority, to refer to trial by regimental court-martial; and K.R. 547 and 552 point out the general rules under which different classes of offences should be dealt with by a lower or higher tribunal. As commanding officers can now (subject to the special limitation in s. 46 (5)) award twenty-eight days' detention for any description of offence, and a regimental court-martial cannot award any punishment higher than forty-two days' detention, the assembly of regimental courts-martial will be of rare occurrence.

Regimental
courts-
martial.

47. (1.) Any officer authorised by or in pursuance of this Act to convene general and district courts-martial or either of them, also any commanding officer of a rank not below the rank of captain, also any officer of a rank not below the rank of captain when in command of two or more corps or portions of two or more corps, also on board a ship a commanding officer of any rank may, without warrant and by virtue of this Act, convene a regimental court-martial for the trial of offences committed by soldiers under his command.

(2.) Such court-martial shall consist of not less than three officers, each of whom must have held a commission during not less than one whole year.

(3.) The convening officer shall appoint the president

(4.) The president of a regimental court-martial shall not be under the rank of captain, unless where the court-martial is held on the line of march, or on board any ship, or unless, in the opinion of the convening officer (such opinion to be expressed in the order convening the court and to be conclusive), a captain is not, with due regard to the public service, available, in any of which cases an officer of any rank may be president.

(5.) A regimental court-martial shall not try an officer, nor award the punishment of death, penal servitude, or imprisonment, or of detention in excess of forty-two days, or of discharge with ignominy; but, subject as aforesaid, and save as in this Act specially mentioned, any offence under this Act committed by a person subject to military law, and triable by court-martial, may be tried and punished by a regimental court-martial.

NOTE.

1. Subs. (1). *Commanding officer.* This does not mean any officer having command, but the commanding officer, as defined by Rule 129; see K.R., 456. An officer, therefore, will not have power to convene a regimental court-martial, unless he either (a) holds a warrant to convene a general or district court-martial; or (b) being of the rank of captain or higher rank, is in command of detachments of two or more corps; or (c) being of the rank of captain or higher rank, is the commanding officer as defined by R.P. 129, i.e., the officer whose duty it is to tell off the accused; or (d) is the commanding officer of soldiers on board a ship.

2. *By soldiers under his command.* A camp follower or other person subject to military law as a soldier, but who does not belong to His Majesty's forces, cannot be tried by a regimental court-martial, s. 184. As to speedy convening of a regimental court. see R.P. 16.

3. *Ship.* This section will apply to a military court-martial for trying a N.C.O. if otherwise allowed to be held on board a ship commissioned by His Majesty. See Order in Council, para. 7, p. Part 1.
ss. 47-48.

4. Subs. (2). *A commission.* Consequently, an officer who had held a commission in the Special reserve of officers for eleven months, would be qualified to sit at the end of one month after he has obtained his army commission. A warrant officer would be qualified to sit if he had held an honorary commission for the specified period. See s. 190 (4).

5. Subs. (3). The convening officer cannot preside himself, or, indeed, be a member of the court, s. 50 (2). The president must be appointed by name; the members may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. K.R. 577. (See also note 8 to this section.)

6. Subs. (4). As to the duty of the president, see R.P. 59. As to the confirmation of the sentence of a regimental court-martial, see s. 54 (1) (a).

7. Subs. (5). *Officer.* This expression includes warrant and other officers holding honorary commissions (s. 190 (4)), and persons subject to military law as officers (s. 175). It must also be recollected that a warrant officer not holding an honorary commission cannot be tried by a regimental court-martial: s. 182 (1). Moreover, by K.R., 438, it is laid down that as a rule a non-commissioned officer above the rank of corporal is not to be tried by such court.

8. Officers of any corps may sit on a regimental court-martial (s. 50 (1)), and the offender may be tried although no officer of the court belongs to the corps of the offender. But see R.P. 20(B) as to the trial of an offender not belonging to the regular forces. A qualified officer personally willing to sit may be attached to a unit for that purpose, or the commanding officer of a detached part of a corps may convene a regimental court-martial composed of officers of other corps, if they are willing to serve, and are attached to the detachment for the purpose. The O.C. the unit from which the attached officer is lent should publish an order placing the officer at the disposal of the O.C. the unit or detachment to which he is to be attached "to serve on a court-martial at.....on.....(date)." The rank, name and corps of the officer will then be inserted in the order for trial. It has, however, been already indicated that a commanding officer will usually apply for a district court-martial, if he does not deal summarily with an offence.

48. The following rules are enacted with respect to general courts-martial and district courts-martial:

General
and district
courts-
martial.

- (1.) A general court-martial shall be convened by His Majesty, or some officer deriving authority to convene a general court-martial immediately or mediately from His Majesty:
- (2.) A district court-martial shall be convened by an officer authorised to convene general courts-martial, or some officer deriving authority to convene a district court-martial from an officer authorised to convene general courts-martial:
- (3.) A general court-martial shall consist, in the United Kingdom, India, Malta, and Gibraltar, of not less than nine, and elsewhere of not less than five, officers, each of whom must have held a commission during not less than three whole years, and of whom not less than five must be of a rank not below that of captain:

Part I.

s. 48.

- (4.) A district court-martial shall consist of not less than three officers, each of whom must have held a commission during not less than two whole years :
- (5.) The minimum number mentioned in this section for a general or district court-martial shall be the legal minimum for that court-martial :
- (6.) A district court-martial shall not try a person subject to military law as an officer, nor award the punishment of death or penal servitude ; but, subject as aforesaid, any offence under this Act committed by a person subject to military law, and triable by court-martial, may be tried and punished by either a general or district court-martial :
- (7.) An officer under the rank of captain shall not be a member of a court-martial for the trial of a field officer :
- (8.) Sentence of death shall not be passed on any prisoner without the concurrence of two-thirds at the least of the officers serving on the court-martial by which he is tried :
- (9.) The president of a court-martial, whether general or district, shall be appointed by order of the authority convening the court ; but he shall not be under the rank of field officer, unless the officer convening the court is under that rank, or unless in the opinion of the officer who convenes the court, such opinion to be expressed in the order convening the court, and to be conclusive, a field officer is not, with due regard to the public service, available, in either of which cases an officer not below the rank of captain may be the president of such court-martial ; and he shall not be under the rank of captain, except in the case of a district court-martial, where in the opinion of the officer who convenes the court, such opinion to be expressed in the order convening the court, and to be conclusive, a captain is not, having due regard to the public service, available.

NOTE.

1. Power to convene general courts-martial is given by warrant, see s. 122 ; and Ch. V, paras. 20-22.

2. The power to convene district courts-martial is not given specifically by warrant, but is an incident of the power to convene general courts-martial : in other words, an officer authorised to convene general courts-martial may either himself convene, or delegate to other officers power to convene, district courts-martial (s. 123). As to the duty of an officer before convening a court, and as to speedy convening of court, see Ch. V, paras. 28-30, and R.P. 17.

3. A convening officer can increase beyond the legal minimum the number of members to sit on a court-martial, but cannot decrease the number below that minimum ; he must therefore take care to convene a court with not less than the minimum, otherwise the proceedings are void.

4. As to the composition, &c., of courts-martial, see also R.P. 19, 20 and 21, and K.R. 577 and 578.

5. Para. (6). In the case of a warrant officer not holding an honorary commission, a district court-martial can only award the punishments specified in para. 2 (a) of s. 182.

6. Para. (9). As regards the appointment of the president and members see K.R., 577 and Notes 5 and 8 to s. 47. The duties of the president are laid down in R.P. 59.

7. Whenever a general officer or colonel or lieutenant-colonel is available, an officer of inferior rank is not to be appointed president of a general court-martial; and on the trial of the commanding officer of a corps, as many members as possible must be officers who have themselves held, or are holding, commands equivalent to that held by the accused. K.R., 578.

8. Where the accused is a warrant officer, the president must not, in any case, be under the rank of captain s. 182 (4).

49. (1.) Where a complaint is made to any officer in command of any detachment or portion of troops in any country beyond the seas, or to the commanding officer of any corps or portion of a corps on active service, or to any officer in immediate command of a body of forces on active service, that an offence has been committed by any person subject to military law,

Field
general
court-martial.

Then, if in the opinion of such officer it is not practicable that such offence should be tried by an ordinary general court-martial, it shall be lawful for him, although not authorised to convene general courts-martial, to convene a court-martial, in this Act referred to as a field general court-martial, for the trial of the person charged with such offence, provided as follows :

- (a.) An officer in command of a detachment or portion of troops not on active service shall not convene a field general court-martial for the trial of any person unless that person is under his command, nor unless the offence with which the person is charged is an offence against the property or person of an inhabitant of, or resident in, the country in which the offence is alleged to have been committed ;
- (b.) A field general court-martial shall consist of not less than three officers ; unless the officer convening the same is of opinion that three officers are not available, having due regard to the public service, in which case the court-martial may consist of two officers ;
- (c.) The convening officer may preside, but he shall, whenever he deems it practicable, appoint another officer as president, who may be of any rank, but shall, if practicable in the opinion of the convening officer, be not below the rank of captain ;
- (d.) Where a field general court-martial consists of less than three officers, the sentence shall not exceed such field punishment as is allowed by this Act, or imprisonment.

(2.) Section forty-eight of this Act shall not apply to a field general court-martial, but sentence of death shall not be passed on any prisoner by a field general court-martial without the concurrence of all the members.

Part I (3.) A field general court-martial may, notwithstanding the
ss. 49-50. restrictions enacted by this Act in respect of the trial by court-martial of civil offences within the meaning of this Act, try any person subject to military law who is under the command of the convening officer and is charged with any such offence as is mentioned in this section, and may award for such offence any sentence which a general court-martial is competent to award for such offence: Provided always, that no sentence of any such court-martial shall be executed until confirmed as provided by this Act.

NOTE.

1. The object of this section is to provide for the speedy trial of offences committed abroad or on active service in cases where it is not practicable, with due regard to the interests of discipline and of the service, to try such offences by an ordinary general court-martial. A field general court-martial can try any offence committed on active service, but where troops are not on active service it can only be convened for the trial of offences against the property or person of some inhabitant of, or resident in, the country. See R.P. 105-123 and notes.

2. Subs. (3). *Restrictions enacted by this Act.* See s. 41 proviso (a).

3. As to confirmation of sentence, see s. 54 (1) (d).

Court-martial in general.

50. (1.) The officers sitting on a court-martial may belong to the same or different corps, or may be unattached to any corps, and may try persons belonging or attached to any corps.

(2.) The officer who convened a court-martial shall not, save as is otherwise expressly provided by this Act, sit on that court-martial.

(3.) Any of the following persons, that is to say—A prosecutor or witness for the prosecution of any accused, or the commanding officer of the accused within the meaning of the provisions of this Act which relate to dealing with a case summarily, or the officer who investigated the charges on which an accused is arraigned, shall not, save in the case of a field general court-martial, sit on the court-martial for the trial of such accused, nor shall he act as judge advocate at such court-martial.

NOTE.

1. Subs. (1). If an officer is competent to sit on a court-martial, he is *qualified* to sit on any court of the same description, and a convening officer may, by arrangement, avail himself of the services of an officer not otherwise under his orders. See Note 8 to s. 47. A general or district court must, so far as seems to the convening officer practicable, be composed of officers of different corps, R.P. 20 (A); and see as to the trial of a member of the Territorial Force s. 178 (note) and R.P. 20 (B). The definition of corps in s. 190 (15) includes the Royal Marines.

2. Subs. (2). *Save as otherwise provided.* See s. 49 (1), (c), which enables the convening officer of a field general court-martial to preside, if it is impracticable to appoint another officer.

3. Subs. (3). A member of the court or a judge advocate is a competent witness for the defence, but not for the prosecution. In the case of a field general court-martial, an officer is disqualified by R.P. 106 (D) for serving, if he is provost-marshal, assistant provost-marshal, or prosecutor, or a witness for the prosecution.

4. *Commanding Officer.* This includes any officer who has been the commanding officer of the accused, within the meaning of s. 46 and R.P. 129, at any time between the date on which the charge against the offender is made and the date of trial inclusive, irrespective of the fact that he did not deal with the case in question.

5. Special attention is drawn to the note on p. 679, relating to the action to be taken in order to prevent officers who have served upon courts of enquiry, regarding the offence about to be tried, from sitting on courts-martial for the trial of the offence.

6. *Investigated the charges.* The officer who investigated is usually the commanding officer of the accused; when he is not, he is equally excluded by these words. He has been defined as meaning the officer who, in a judicial capacity, sifted the evidence in such a way as to acquaint him with, and lead him to form a conclusion upon, the merits of the case, and does not include an officer through whose hands the charges passed merely formally or ministerially. R.P. 19 (B) iii, however, adds to the list of disqualified officers the officer who took down the summary of evidence, the company, &c., commander who conducted the preliminary inquiry, and any member of a court of inquiry which may have dealt with the case.

51. (1.) An accused about to be tried by any court-martial may object, for any reasonable cause, to any member of the court, including the president, whether appointed to serve thereon originally or to fill a vacancy caused by the retirement of an officer objected to, so that the court may be constituted of officers to whom the accused makes no reasonable objection. Challenges
by accused

(2.) Every objection made by an accused to any officer shall be submitted to the other officers appointed to form the court.

(3.) If the objection is to the president, such objection, if allowed by one-third or more of the other officers appointed to form the court, shall be allowed, and the court shall adjourn for the purpose of the appointment of another president.

(4.) If an objection to the president is allowed, the authority convening the court shall appoint another president, subject to the same right of the accused to object.

(5.) If the objection is to a member other than the president, and is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(6.) In order to enable an accused to avail himself of his privilege of objecting to any officer, the names of the officers appointed to form the court shall be read over in the hearing of the accused on their first assembling, and before they are sworn, and he shall be asked whether he objects to any of such officers, and a like question shall be repeated in respect of any officer appointed to serve in lieu of a retiring officer.

Part I.

ss. 51-52.

NOTE.

1. It will be observed that this section gives the accused an absolute right to a new president, if the challenge of the president by the accused is allowed by one-third of the officers appointed to form the court. A challenge of the president must be dealt with first.

2. As to challenges generally, see R.P. 25 and note; as to adjourning for the purpose of appointing fresh members, and the power to convene another court, R.P. 18; and as to challenges where a court is being sworn to try several persons, R.P. 71 (A) (B). In the case of a field general court-martial, an objection to any officer will be allowed, if any member of the court thinks the objection reasonable, R.P. 110 (B).

Adminis-
tration of
oaths.

52. (1.) An oath shall be administered by the prescribed person to every member of every court-martial before the commencement of the trial in the following form; that is to say,

"You do swear, that you will well and truly try the accused [or accused persons] before the court according to the evidence, and that you will duly administer justice according to the Army Act now in force, without partiality, favour, or affection, and you do further swear that you will not divulge the sentence of the court until it is duly confirmed, and you do further swear that you will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you GOD."

(2.) An oath in the prescribed form or forms shall be administered by the prescribed person to the judge advocate or person officiating as judge advocate (if any), and also to every officer in attendance on a court-martial for the purpose of instruction (if any), and also to every shorthand writer (if any), in attendance on the court-martial.

(3.) Every witness before a court-martial shall be examined on oath, which the president or other prescribed person shall administer in the prescribed form.

(4.) If a person by this Act required either as a member of, or person in attendance on, or witness before a court-martial, or otherwise in respect of a court-martial, to take an oath, objects to take an oath, or is objected to as incompetent to take an oath, the court, if satisfied of the sincerity of the objection or, where the competence of the person to take an oath is objected to, of the oath having no binding effect on the conscience of such person, shall permit such person instead of being sworn to make a solemn declaration in the prescribed form, and for the purposes of this Act such solemn declaration shall be deemed to be an oath.

NOTE.

1. Subs. (1). *By the prescribed person.* This person is prescribed by R.P. 26. The oath taken by members of the court binds them in their capacity of jurors to find a true verdict according to the evidence (discarding

from their minds any private knowledge or information they may happen to possess), and in their capacity of judges to administer justice duly; as well as to keep secret the votes of members, and (until confirmed) the sentence of the court. Part I.
ss. 52-53.

2. The oath taken by members of the court implies that, as a general rule, the opinions of the individual members ought not to be stated, and consequently the court ought not to disclose whether the decision was unanimous or by a majority. The decision is the decision of the court as a whole, and the fact of its being unanimous or not is usually immaterial. The qualification at the end of the oath, "unless thereunto required in due course of law," only applies to such cases as those where members of the court are charged individually with partiality or bribery, and thus in a court of justice it would, or might, be necessary to make disclosures regarding individual votes to the court trying members so charged.

3. R.P. 111 (A) provides for the mode of swearing the court in the case of a field general court-martial.

4. Subs. (2). The forms of oaths for the judge advocate, for an officer attending for instruction, for a shorthand writer and an interpreter, and the person to administer them, are prescribed by R.P. 27; and for an interpreter at a field general court-martial by R.P. 111 (B).

5. Subs. (3). The form of oath for a witness, and the person to administer it, are prescribed by R.P. 82, and in the case of a field general court-martial by R.P. 114.

6. Subs. (4). The form of solemn declaration is prescribed by R.P. 28. As to swearing a person according to his own religion, see R.P. 30; and in the case of a field general court-martial, R.P. 115.

7. The practice followed in the law courts of any colony or foreign country as to the mode of swearing or taking the affirmation of natives should usually be adopted.

8. For punishment of perjury committed by a witness subject to military law, see s. 29; by a civilian, see s. 126 (2).

53. (1.) If a court-martial after the commencement of the trial Procedure. is, by death or otherwise, reduced below the legal minimum, it shall be dissolved.

(2.) If after the commencement of the trial the president dies or is otherwise unable to attend, and the court is not reduced below the legal minimum, the convening authority may appoint the senior member of the court, if of sufficient rank, to be president, and the trial shall proceed accordingly; but if he is not of sufficient rank the court shall be dissolved.

(3.) If, on account of the illness of the accused before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(4.) Where a court-martial is dissolved under the foregoing provisions of this section the accused may be tried again.

(5.) The president of any court-martial may, on any deliberation amongst the members, cause the court to be cleared of all other persons.

(6.) The court may adjourn from time to time.

(7.) The court may also, where necessary, view any place.

(8.) In the case of an equality of votes on the finding the accused shall be deemed to be acquitted. In the case of an equality of

(M.L.)

2 2

Part I. votes on the sentence, or any question arising after the commencement of the trial except the finding, the president shall have a second or casting vote.

ss. 53-54.

(9.) When a court-martial recommends a person under sentence to mercy, such recommendation shall be attached to and form part of the proceedings of the court, and shall be promulgated and communicated to the person under sentence, together with the finding and the sentence.

NOTE.

1. Subs. (2). *Is unable to attend.* The court cannot proceed at all without a president, and in the event of his absence must adjourn till he can attend, or till his place is supplied by the convening authority: see R.P. 65 (B).

2. Subs. (3). *Illness of the accused.* A medical certificate should always, where possible, be obtained, stating that the illness of the accused renders his presence in court impracticable, or dangerous to himself or others, and also the time when, in the opinion of the medical officer, the accused will be able to be present.

3. *Impossible to continue.* This means to continue within a reasonable time having regard to all the circumstances.

4. Subs. (4). It may frequently be inexpedient to convene a fresh court for a retrial under this provision, especially where the accused has been for some time under arrest or in confinement.

5. Subs. (5). *Cause the court to be cleared.* If more convenient the court may withdraw for deliberation; see R.P. 63.

6. Subs. (6). *Adjourn.* See as to adjournment, R.P. 65.

7. Subs. (7). *View.* The convening officer cannot depute a selection of members to view a place, as the view must be in open court (R.P. 63 (B)) i.e., in the presence of all the members, the prosecutor, and the accused.

8. Subs. (8). *Acquitted.* In such a case the acquittal, if it relates to all the charges, must be at once pronounced in open court, and the accused must be discharged; s. 54 (3).

9. Subs. (9). As a recommendation to mercy is part of the proceedings, any expression of opinion in it in relation to the finding must be read with, and as part of, the finding.

10. Where, in a recommendation to mercy, a court expressed an opinion inconsistent with the guilt of the person under sentence, for instance, where the charge was for striking a superior, and the court stated their opinion that the accused "did not intend to strike," it was held that it must be treated as an acquittal, the intent being an element of the offence.

11. As to the exceptional character of recommendations to mercy see Ch. V, para. 88.

Confirmation,
revision,
and
approval, of
sentences.

54. (1.) The following authorities shall have power to confirm the findings and sentences of court-martial; that is to say:—

(a.) In the case of a regimental court-martial, the convening officer or officer having authority to convene such a court-martial at the date of the submission of the finding and sentence thereof:

(b.) In the case of a general court-martial, His Majesty, or some officer deriving authority to confirm the findings and sentences of general courts-martial immediately or mediately from His Majesty:

(c.) In the case of a district court-martial, an officer authorised to convene general courts-martial, or some officer deriving authority to confirm the findings and sentences of district courts-martial from an officer authorised to convene general courts-martial :

(d.) In the case of a field general court-martial, an officer authorised to confirm the findings and sentences of general courts-martial for the trial of offences in the force of which the detachment or portion of troops under the command of the convening officer forms part, or where the offence was committed on active service, any such officer as may under the rules made in pursuance of this Act be authorised to confirm the findings and sentences of the field general court-martial awarding the sentence : Provided that a sentence of death or penal servitude awarded by a field general court-martial shall not be carried into effect unless or until it has been confirmed by the general or field officer commanding the force with which the person under sentence is present at the date of his sentence.

(2.) The authority having power to confirm the finding and sentence of a court-martial may send back such finding and sentence, or either of them, for revision once, but not more than once, and it shall not be lawful for the court on any revision to receive any additional evidence ; and where the finding only is sent back for revision, the court shall have power without any direction to revise the sentence also. In no case shall the authority recommend the increase of a sentence, nor shall the court-martial on revisal of the sentence, either in obedience to the recommendation of an authority, or for any other reason, have the power to increase the sentence awarded.

(3.) The finding of acquittal, whether on all or some of the offences with which the accused is charged, shall not require confirmation or be subject to be revised, and if it relates to the whole of the offences shall be pronounced at once in open court, and the accused shall be discharged.

(4.) A member of a court-martial shall not have authority to confirm the finding or sentence of that court-martial, and where a member of a court-martial becomes confirming officer he shall refer the finding and sentence of the court-martial to a superior authority competent to confirm the findings and sentences of the like description of courts-martial, and that authority shall, for the purposes of this Act, be deemed to be in that instance the confirming authority ; and where a court-martial is held in a colony, and there is no such superior authority in that colony, the governor of that colony shall have power to confirm the finding and sentence of such court-martial in like manner in all respects as if he were such

Part I. superior authority as above mentioned. Provided that where a member of a field general court-martial trying an accused would but for his being a member of the court have power to confirm the finding and sentence of the court, and is of opinion that it is not practicable, having due regard to the public service, to delay the case for the purpose of referring it to any other officer, he may confirm the finding and sentence.

s. 54.

(5.) An officer having authority to confirm the finding and sentence of a court-martial may withhold his confirmation wholly or partly, and refer such finding and sentence, or the part not confirmed, to any superior authority competent to confirm the findings and sentences of the like description of courts-martial, and that authority shall for the purpose of this Act be deemed to be in that instance and to the extent of such reference the confirming authority.

(6.) Subject to the provisions of this Act with respect to the finding of acquittal, the finding and sentence of a court-martial shall not be valid except in so far as the same may be confirmed by an authority authorised to confirm the same.

(7.) Sentence of death when passed in a colony shall not, unless passed in respect of an offence committed on active service, be carried into effect unless, in addition to the confirmation otherwise required by this Act, it is approved by the governor of the colony.

(8.) Sentence of death when passed in India in respect of the offence of treason or murder shall not (except where the offence was committed on active service) be carried into effect unless, in addition to the confirmation otherwise required by this Act, it is approved by the Governor-General.

(9.) When a person subject to military law is convicted of manslaughter or rape, or any other civil offence under the section of this Act relating to the trial by court-martial of civil offences, and is sentenced to penal servitude, such sentence shall not be carried into execution unless, in addition to the confirmation otherwise required by this Act, it is approved, if the offender has been tried in India, by the Governor-General, or, if he has been tried in a colony, by the Governor of the colony.

NOTE.

1. As to confirmation and revision generally, see Ch. V, paras. 89-99, and as to field general court-martial, R.P. 120 and note. Confirmation is complete when the proceedings are promulgated.

2. If proceedings are confirmed in error by an officer not having power to confirm, his act and the subsequent promulgation are null, and it is open to the proper authority to confirm.

3. Subs. (2) and (3). The effect is that revision, except for curing legal defects in the finding or sentence, can only be used for acquitting the accused or mitigating the sentence, inasmuch as revision can only be ordered in case of conviction, and if it is ordered the sentence cannot be increased. See R.P. 51 and note 3 thereto.

4. The Act, by declaring that an acquittal on a charge shall not require confirmation, makes the decision of the court on that charge, both as regards the facts and the law, absolute. As to comments by the confirming officer in the case of an acquittal, see R.P. 51 (A) and K.R. 589, 590.

5. Where a finding on being sent back for revision is varied in any material respect by the court, a new sentence (not, however, necessarily differing from the original sentence) must be passed, for on the original finding being revoked, the sentence based upon it falls. Where a new sentence is not passed, the accused is not legally under any sentence.

6. In no circumstances can a finding of "not guilty" on a charge be revised, even if a finding of "guilty" on an alternative charge is not confirmed.

7. Subs. (4). See note to R.P. 97. *Colony*. See the definition, in s. 190 (23).

8. Subs. (5). See note to R.P. 97 (A).

9. Subs. (6). The result of this sub-section is that if a finding of conviction is not confirmed it is invalid (see also R.P. 120 (A), and Ch. V, para. 5), consequently there is no conviction, and the accused has not been convicted by a court-martial for the purpose either of any subsequent trial or of any entry in the conduct book. See s. 157 and note, and R.P. 56.

10. It has been ruled that confirmation ought to be withheld in the following cases:—

Where the provisions of s. 47 in the case of a regimental, or those of s. 48 in that of a general or district court-martial, and in either case those of ss. 50, 51, or 52 have been contravened.

Where evidence of a nature prejudicial to the accused has been wrongfully admitted.

Where the accused has been unduly restricted in his defence.

Where a finding of guilty has been come to with the exception of certain words of the charge, and these words so far describe the essence of the offence, that the finding, with the words omitted, fails to disclose an offence of which the court could legally have convicted.

Where a special finding of guilty fails to disclose an offence of which the court might have legally convicted.

Where the charge is bad in law, even when the accused has pleaded guilty.

Where there has been such a deviation from the rules of procedure that injustice has been done to the accused.

11. Subs. (7). *Active service*. See the definition in s. 189.

12. Subs. (8) and (9). *India*. See the definition in s. 190 (21). *Civil offence*. See s. 41.

55. [Section 55 was repealed by A.A.A., 1893.]

56. (1.) An accused charged before a court-martial with stealing may be found guilty of embezzlement or of fraudulently misapplying money or property.

(2.) An accused charged before a court-martial with embezzlement may be found guilty of stealing or fraudulently misapplying money or property.

(3.) An accused charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(4.) An accused charged before a court-martial with attempting to desert may be found guilty of desertion or of being absent without leave.

Conviction of less offence permissible on charge of greater.

Part I. (5.) An accused charged before a court-martial with any other
 ss. 56-57. offence under this Act may, on failure of proof of an offence being
 committed under circumstances involving a higher degree of punishment,
 be found guilty of the same offence as being committed
 under circumstances involving a less degree of punishment.

NOTE.

1. Alternative charges will not be preferred in the cases provided for in sub-sections (1) to (4) of this section, but in other cases where the facts disclose a greater and a lesser offence it may in practice be expedient to prefer alternative charges. See R.P., Appendix I, Note as to use of Forms of Charges (6), p. 646.

2. Except in the cases specified in this section a court has no power to find a person guilty of any offence other than that with which he is charged. A court, however, may (as allowed by R.P. 44 (C)) find a person guilty of a charge with the exception of certain words or with certain immaterial variations, and this finding will be valid so long as in its reduced or varied form it discloses an offence under the Act.

3. Subs. (5). *E.g.*, a man charged with striking his superior officer in the execution of his office may be convicted of striking his superior officer; or a man charged with an offence committed on active service may be found guilty of the same offence committed not on active service; or a man charged with wilfully allowing the escape of a person in custody may be found guilty of allowing his escape without reasonable excuse. The converse, of course, is not allowed; that is to say, a person charged with an offence cannot be convicted of a greater offence of the same class.

EXECUTION OF SENTENCE.

Commuta-
tion and
remission of
sentences.

57. (1.) The confirming authority may, when confirming the sentence of any court-martial, mitigate or remit the punishment thereby awarded, or commute such punishment for any less punishment or punishments to which the offender might have been sentenced by the said court-martial, or if such punishment is death awarded for the offence of murder, then for penal servitude or such less punishment as is in this Act mentioned. The confirming authority may also suspend for such time as seems expedient the execution of a sentence.

(2.) When a sentence passed by a court-martial has been confirmed, the following authorities shall have power to mitigate or remit the punishment thereby awarded, or to commute such punishment for any less punishment or punishments to which the offender might have been sentenced by the said court-martial, or if such punishment is death awarded for the offence of murder, then for penal servitude or such less punishment as in this Act mentioned; that is to say,

(a.) As respects persons undergoing sentence in any place whatever, His Majesty or the Army Council or the officer commanding the district or station where the prisoner subject to such punishment may for the time be, or any prescribed officer; and

- (b.) As respects persons undergoing sentences in India, the Commander-in-Chief of the forces in India, or such other officer as the Commander-in-Chief of the forces in India, with the approval of the Governor-General of India in Council, may appoint; and
 - (c.) As respects persons undergoing sentences in any colony, the officer commanding the forces in that colony; and
 - (d.) As respects persons undergoing sentences in any place not in the United Kingdom, India, or a colony, the officer commanding the forces in such place.
- (3.) Provided that the power given by this section shall not be exercised by an officer holding a command inferior to that of the authority confirming the sentence, unless such officer is authorised by such confirming authority or other superior military authority to exercise such power.
- (4.) An authority having power under this section to mitigate, remit, or commute any punishment may, if it seem fit, do all or any of those things in respect of a person subject to such punishment.
- (5.) The provisions of this Act with respect to an original sentence of penal servitude, imprisonment, or detention shall apply to a sentence of penal servitude, imprisonment, or detention imposed by way of commutation.

NOTE.

1. See Ch. V, para. 98; and as to diminution of sentence for offences in several charges, where the finding on one or more of them is not confirmed, see R.P. 54. See also as to duty of confirming officer, K.R., 587-591.

2. *Mitigation* is awarding a less amount of the same species of punishment, as, for example, by reducing the length of imprisonment to which an offender has been sentenced; and is in effect equivalent to a remission of part of the sentence.

3. *Remission* may be remission of the whole or of part of the sentence; thus a sentence of imprisonment with hard labour may be remitted altogether, or a portion of the term, or the hard labour may be remitted. As to notification of remission of imprisonment or detention, see K.R., 632.

4. *Commutation* is changing the description of punishment by awarding a punishment lower in the scale of punishments in s. 44, as imprisonment in lieu of penal servitude, or dismissal in lieu of cashiering, or detention in lieu of imprisonment; but the effect of s. 44 (1A) is that imprisonment can only be commuted to an equal or shorter term of detention, e.g., the commutation of six months imprisonment to seven months detention would be illegal. In the case of an officer sentenced to be cashiered for an offence against s. 16 the sentence cannot be commuted as no other sentence could have been awarded.

5. Suspension of the execution of a sentence, which can only take effect after confirmation, does not postpone the commencement of any term of penal servitude, imprisonment, or detention.

6. The powers conferred by this section may be exercised by the confirming authority, as such, under subs. (1), only when confirming the sentence

Part I. After promulgation, when the confirmation is complete, the power of the confirming authority in that capacity ceases, and the above powers can only be exercised in the manner prescribed in the later parts of the section.

7. The confirming authority as such cannot commute a punishment into general service; s. 83 (7) and note.

8. For definitions of India and colony, see s. 190 (21) and (23).

9. The section allows an authority to commute a punishment "for any less punishment or punishments" to which the offender might have been sentenced. As, however, there is no standard of comparison between one punishment and two or more other punishments, and as it is necessary that the commuted sentence should be less than the original sentence, the validity of the commutation of one punishment to two or more punishments is liable to be called in question. Partial commutation by the authority of any one punishment by the substitution for a portion thereof of another punishment is illegal. Thus, where in a case of "losing by neglect" a court passed a sentence of detention, but omitted to pass a sentence of stoppage, the confirming authority could not commute a portion of the detention to the stoppages which the court might have awarded.

10. The penal servitude, imprisonment, or detention, under commutation, must commence on the date of the original sentence, even though that sentence was not one of penal servitude, imprisonment, or detention, as the case may be.

11. Subs. (2) (a). *Prescribed officer*, see R.P. 126 (O).

58. When a person subject to military law is convicted by a court-martial, whether in the United Kingdom, or elsewhere, either within or without His Majesty's dominions, and is sentenced to penal servitude, such conviction and sentence shall be of the same effect as if such person (in this Act referred to as a military convict) had been convicted in the United Kingdom of an offence punishable by penal servitude and sentenced to penal servitude by a competent civil court, and all enactments relating to a person sentenced to penal servitude by a competent civil court shall, so far as circumstances admit, apply accordingly.

NOTE.

1. Ss. 58 to 62 relate to penal servitude, and provide separately for the execution of sentences of penal servitude passed in the United Kingdom, in India or a colony, and in a foreign country.

2. The effect of these sections and of the proviso to s. 131 is, that wherever a sentence of penal servitude is passed, the convict (subject to the exceptions mentioned in the proviso and the note to s. 131) must, as soon as practicable, be brought to the United Kingdom to undergo his sentence in some prison in which a prisoner sentenced to penal servitude in the United Kingdom can be confined. (See the definition of "penal servitude prison" in s. 62 (1).)

3. These sections further enable a convict to be discharged by certain military authorities (at present only the Army Council) at any time before he reaches his penal servitude prison, and also provide for his conveyance in custody from the place where he is sentenced to penal servitude, however distant, until his arrival in the prison where he is to undergo his sentence.

4. In the United Kingdom, though he may be kept in military custody till sent to a penal servitude prison, his period of military custody will necessarily be short, as his commanding officer or other military authority should commit him, without unnecessary delay after the promulgation of the sentence, to some public prison. He then comes under the jurisdiction of the Home Secretary, and is out of the jurisdiction of the military authorities.

Effect of
sentence of
penal servi-
tude.

See
inserted
amendments
for
ss 56-68

Amendments
— §§ 58-68

MANUAL OF MILITARY LAW

AMENDMENTS

For the existing Sections 58 to 68 of the Army Act, and notes thereto, on pages 440-452, substitute:—

Penal Servitude

Effect of sentence of penal servitude.

58. Where a sentence of penal servitude is passed by a court-martial, the military convict shall, as soon as practicable, be committed to a penal servitude prison to undergo his sentence according to law:

Provided that where the sentence was passed for an offence committed on active service, the competent military authority may order that any part of the sentence, not exceeding two years, shall be served in a military prison in accordance with rules made for the purpose under this Act, and in such case the provisions of this Act with respect to penal servitude (except those relating to the treatment of a military convict on arrival at a penal servitude prison) shall, with respect to the part of the sentence to be so served, have effect as though for references to a penal servitude prison there were substituted references to a military prison.

NOTE.

1. In the Army and Air Force (Annual) Act, 1926, the sections of the Army Act dealing with the execution of sentences and the nature and locality of the penal establishments in which those sentences are to be served (ss. 58-68 and 131-135) were redrafted to give effect to the recommendations of the Army Act Revision Committee, who had reported that the provisions, as they then stood, constituted a very confusing piece of legislation, and had given rise to great difficulties in practice. The redraft did not effect any substantial alteration of the law, except that of the addition of the proviso to this section which enables a soldier sentenced to penal servitude for an offence committed on active service to serve part of his sentence, not exceeding two years, in a military prison instead of in a penal servitude prison.

2. See, generally, as to a military convict, K.R. 668-671. For commencement of term of penal servitude, see s. 68 (1). For general provisions as to the forms of orders of military authorities, see s. 172.

3. *Penal servitude prison.* For definition see s. 68 (2) (g).

4. *On active service.* For definition see s. 189 (1).

5. *Competent military authority.* See s. 68 (2) (h) and R.P. 126 (C).

6. *Military prison.* For definition see s. 68 (2) (d).

7. *Rules made for the purpose under this Act.* See s. 132 (2). The rules are contained in Rules for Military Detention Barracks and Military Prisons, and Rules for Military Prisons in the Field.

8. When a person sentenced to penal servitude is dismissed or discharged from His Majesty's service, he ceases to be subject to military law, and the Army Act applies to him only for the purpose of completing his punishment.

Place in which sentence to be served.

59. The penal servitude prison to which a military convict is committed shall be a penal servitude prison in the United Kingdom, unless the convict—

- (a) was sentenced in India or a colony, and belongs to a class of persons with respect to whom the Secretary of State by declaration laid before both Houses of Parliament has declared that by reasons of climate, place of birth, place of enlistment or otherwise, transfer to the United Kingdom would not be beneficial; or

(b) was enlisted in a colony, and belongs to a class of persons so enlisted with respect to whom the Secretary of State has arranged with the Governor of that colony that they may, if sentenced to penal servitude, be transferred to or kept in the colony and there undergo sentence, in either of which cases he may undergo his sentence in India or the colony, as the case may require.

NOTE.

1. *Penal servitude prison.* For definition see s. 68 (2) (g).
 2. For definitions of India and colony, see s. 190 (21) and (23); see also s. 187 (2) as to the Channel Islands and Isle of Man; and as to a mandated territory, s. 187A.

3. Under this section the Secretary of State made a declaration dated 12th August, 1926, declaring it not to be beneficial to any of the following classes to be transferred to the United Kingdom when under sentence of penal servitude:—

- (1) By reason of climate :—
 Asiatics and Africans.
 Other persons of colour.
- (2) By reason of place of birth :—
 Persons born out of the United Kingdom and domiciled in any place not in the United Kingdom.
- (3) By reason of place of enlistment :—
 Persons engaged for service in the Royal Malta Artillery, or in any Indian or colonial corps.

60. (1) Until transferred to a penal servitude prison a military convict—

- (a) if in the United Kingdom or a foreign country, shall be kept in military custody;
- (b) if in India or a colony, may be kept in military custody or in civil custody, or partly in one description of custody and partly in the other, and may, by order of the competent military authority, from time to time be transferred from military custody to civil custody and from civil custody to military custody as occasion may require.

Interim custody of military convict before arrival at penal servitude prison.

(2) A military convict in India or a colony may, whilst in civil custody in any prison, be dealt with, in respect of hard labour and otherwise, according to the rules of that prison.

NOTE

1. *Penal servitude prison.* For definition see s. 68 (2) (g).
 2. For definition of foreign country, see s. 190 (24); and for definitions of India and colony, see s. 190 (21) and (23). For the purpose of the provisions of the Act relating to the execution of sentences of penal servitude, the Channel Islands and Isle of Man are deemed to be colonies; s. 187 (2). As to a mandated territory, see s. 187A.

3. *Civil custody.* For definition see s. 68 (2) (c).

4. Subs. (1) (b). *Competent military authority.* See s. 68 (2) (h) and R.P. 126 (D).

61. (1) An order of the competent military authority shall be a sufficient warrant for the committal of a military convict to a penal servitude prison.

Committal, removal, release, &c., of military convict.

(2) An order of the competent military authority shall be a sufficient authority for the transfer of the military convict from military custody to civil custody and from civil custody to military custody, and his removal from place to place, and for his detention in civil custody, and generally for dealing with such convict

in such manner as may be thought expedient until he is transferred to a penal servitude prison.

(3) A military convict at any time either before or after his arrival at a penal servitude prison, may, if his sentence is remitted, be released by order of the competent military authority.

(4) A military convict may, during his conveyance from place to place, or when on board ship or otherwise, be subjected to such restraint as is necessary for his safe conduct and removal.

NOTE.

1. Subs. (1). *Competent military authority.* See s. 68 (2) (h) and R.P. 126 (F).

2. For form of order of commitment, see R.P., App. III, Forms A and B.

3. *Penal servitude prison.* For definition see s. 68 (2) (g).

4. Subs. (2). *Competent military authority.* See s. 68 (2) (h) and R.P. 126 (H). For definition of civil custody, see s. 68 (2) (c).

5. Subs. (3). *Competent military authority.* See s. 68 (2) (h) and R.P. 126 (I).

6. It should be noted that under this section the release of a military convict can only be ordered by a competent military authority if his sentence is remitted by an authority having power to do so under s. 57.

Treatment
of military
convict in
penal serv-
itude
prison.

62. After a military convict has arrived at a penal servitude prison to undergo his sentence, he shall be dealt with in the same manner as an ordinary civil prisoner under sentence of penal servitude; and all enactments relating to a person sentenced to penal servitude by a competent civil court shall, so far as circumstances admit, apply accordingly.

NOTE

Penal servitude prison. For definition see s. 68 (2) (g).

Imprisonment and Detention

Effect of
sentence of
imprison-
ment or
detention.

63. (1) Where a sentence of imprisonment is passed by a court-martial, the military prisoner shall undergo the term of his imprisonment either in a military prison, or detention barrack, or in other military custody, or in a civil prison, or partly in one way and partly in another.

(2) Where a sentence of detention is passed by a court-martial or a commanding officer, the person on whom that sentence has been passed shall undergo the term of his detention either in a detention barrack, or in military custody, or partly in one way and partly in the other, but not in a prison.

NOTE

1. See, generally, as to soldiers under sentence, K.R. 672-683.

2. For general provisions as to forms of orders of military authorities, see s. 172. For commencement of term of imprisonment or detention, see s. 68 (1). As to the place in which sentence is to be served, see s. 64.

3. For definitions of military prisoner, military prison, detention barrack, and civil prison, see s. 68 (2) : (b), (d), (e), and (f), respectively.

4. When a person sentenced to imprisonment or detention is dismissed or discharged from His Majesty's service, he ceases to be subject to military law and the Army Act applies to him only for the purpose of completing his punishment. See s. 158 and note 3.

Place in
which sen-
tence to be
served.

64. (1) Subject to the provisions of this section, a military prisoner or soldier under sentence of detention who was sentenced or is undergoing his sentence in the United Kingdom shall not be removed to a prison or detention barrack elsewhere, unless he was enlisted in a colony and belongs to a class of persons so enlisted with respect to whom the Secretary of State has arranged with the Governor of that colony that they may, if sentenced to

imprisonment or detention, be transferred to the colony and there undergo sentence, in which case he may be removed to a prison or detention barrack in that colony.

(2) The competent military authority may give directions for delivery into military custody of any military prisoner or soldier undergoing detention, and the removal of such prisoner or soldier, whether with his corps or separately, to any place beyond the seas where the corps or any part thereof to which for the time being he belongs is serving or under orders to serve.

(3) A military prisoner or soldier under sentence of detention who was sentenced in a foreign country shall undergo his sentence either in that foreign country, or in any foreign country in which the force with which he is serving may be, or in the United Kingdom, or in such other place as may be prescribed.

(4) A military prisoner or soldier under sentence of detention who was sentenced in India or a colony shall undergo his sentence either in India, or in that colony (as the case may be), or in such other part of His Majesty's dominions as may be prescribed, or in the United Kingdom:

Provided that—

(a) if the term of his sentence exceeds twelve months, he shall be transferred as soon as practicable to a prison or detention barrack in the United Kingdom, unless—

(i) he belongs to a class of persons with respect to whom the Secretary of State by declaration laid before both Houses of Parliament has declared that by reasons of climate, place of birth, place of enlistment or otherwise, transfer to the United Kingdom would not be beneficial; or

(ii) the court for special reasons otherwise orders; and any order which may be made under this provision by the court may be made by the confirming authority in confirming the finding and sentence, and in the case of any commutation or remission of sentence may be made by the authority commuting or remitting the sentence; and

(b) a military prisoner or soldier undergoing detention in India or a colony shall not, for longer than is absolutely necessary, be detained in any civil prison other than a prison in respect of which arrangements have been made by the Secretary of State under this Act with the Governor-General of India or the Governor of the colony.

NOTE.

1. Subs. (1). For definition of colony, see s. 190 (23). As to the Channel Islands and Isle of Man, see s. 187 (2); as to a mandated territory, see s. 187A.

2. Subs. (2). See, generally, as to removal of soldiers under sentence, K.R. 684-696.

3. The object of this sub-section is to enable soldiers who are undergoing sentences of imprisonment or detention to be removed in custody for service abroad. Soldiers sentenced for military offences (desertion, for instance), may in many cases be given a fresh opportunity of recovering their characters by being at once removed to a station abroad. The section will also prevent soldiers who commit offences immediately before embarkation for service from escaping all punishment; but it gives no authority to commit such offenders to a prison or detention barrack on their arrival at a station abroad.

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4. *Competent military authority.* See s. 68 (2)(h) and R.P. 126 (H).

5. Subs. (3). For definition of foreign country, see s. 190 (24).

6. *Or in such other place as may be prescribed.* See R.P. 130.

7. Subs. (4). For definitions of India and colony, see s. 190 (21) and (23). For the purpose of the provisions of the Act relating to the execution of sentences of imprisonment and detention, the Channel Islands and Isle of Man are deemed to be colonies; s. 187 (2). As to a mandated territory, see s. 187A.

8. *Or in such other part of His Majesty's dominions as may be prescribed.* See R.P. 130.

9. Where a unit moves from one colony to another and takes its prisoners with it, they cannot be committed under their old sentences to a prison at the place of destination of the regiment unless such prison has been prescribed, or is a military prison, and in the latter case the regulations on the subject must be observed. A soldier sentenced to detention may be removed from any detention barrack to any other wherever situate, except that he cannot be removed from a detention barrack in the United Kingdom to a detention barrack elsewhere save as provided in subs. (1).

10. Proviso (a) (i). Under this section the Secretary of State made a declaration dated 12th August, 1926, declaring it not to be beneficial to any of the following classes to be transferred to the United Kingdom when under sentence of imprisonment or detention:—

(1) By reason of climate:—

Asiatics and Africans.

Other persons of colour.

(2) By reason of place of birth:—

Persons born out of the United Kingdom and domiciled in any place not in the United Kingdom.

(3) By reason of place of enlistment:—

Persons engaged for service in the Royal Malta Artillery, or in any Indian or colonial corps.

Interim
custody of
military
prisoner or
soldier
undergoing
detention.

65. A military prisoner or soldier undergoing detention may until he reaches the prison or detention barrack in which he is to undergo his sentence, be kept in military custody or in civil custody, or partly in one description of custody and partly in the other, and may, by order of the competent military authority, from time to time be transferred from military custody to civil custody, and from civil custody to military custody as occasion may require.

NOTE.

1. For definition of civil custody, see s. 68 (2) (c).

2. *Competent military authority.* See s. 68 (2) (h) and R.P. 126 (E).

Committal,
removal,
release, &c.
of military
prisoner or
soldier
undergoing
detention.

66. (1) An order of the competent military authority shall be a sufficient warrant for the committal of a military prisoner to prison or a detention barrack, or a soldier under sentence of detention to a detention barrack.

(2) An order of the competent military authority shall be a sufficient authority for the transfer of a military prisoner from prison to a detention barrack, or vice versa, or from one prison or detention barrack to another prison or detention barrack, or for the transfer of a soldier undergoing detention from one detention barrack to another, or for the delivery into military custody of a military prisoner or a soldier undergoing detention.

(3) A military prisoner or a soldier undergoing detention may at any time, if his sentence is remitted, be released by order of the competent military authority.

(4) A military prisoner or a soldier undergoing detention may, during his conveyance from place to place, or when on board ship or otherwise, be subjected to such restraint as is necessary for his safe conduct and removal.

NOTE

1. For form of orders, see R.P. App. III.
2. Subs. (1). *Competent military authority.* See s. 68 (2) (h) and R.P. 126 (G).
3. Subs. (2). *Competent military authority.* See s. 68 (2) (h) and R.P. 126 (H).
4. Subs. (3). *Competent military authority.* See s. 68 (2) (h) and R.P. 126 (I).
5. It should be noted that under this section the release of a military prisoner or soldier undergoing detention can only be ordered by competent military authority if the sentence is remitted by an authority having power to do so under s. 57.

67. (1) A military prisoner while in a civil prison shall be confined, kept to hard labour, and otherwise dealt with in the same manner as an ordinary prisoner under a like sentence of imprisonment.

Treatment and classification of prisoners in civil prisons.

(2) Where the hospital or place for reception of sick persons in a prison or a detention barrack is detached from the prison or detention barrack, a military prisoner or a soldier undergoing detention may be detained in that hospital or place, and conveyed to or from the same as circumstances require.

(3) Whereas it is expedient that a clear difference should be made between the treatment of prisoners convicted of breaches of discipline and the treatment of prisoners convicted of offences of an immoral, dishonest, shameful, or criminal character, or sentenced to be discharged from the service with ignominy, a Secretary of State shall from time to time make rules for the classification and treatment of such prisoners.

NOTE.

Subs. (3). See, generally, K.R. 672, 709; and Rules for Military Detention Barracks and Military Prisons.

Commencement of Sentence and Interpretation of Provisions as to Punishment.

68. (1) The term of penal servitude, imprisonment, or detention to which a person subject to military law is sentenced by a court-martial, whether the sentence has been revised or not, and whether the person is already undergoing sentence or not, shall (save as otherwise expressly provided in this Act) be reckoned to commence on the day on which the original sentence and proceedings were signed by the president of the court-martial.

Commencement of sentence and interpretation of provisions as to punishments.

(2) For the purpose of the provisions of this Act relating to penal servitude, imprisonment and detention unless the context otherwise requires—

- (a) The expression "military convict" means a person under sentence of penal servitude passed by a court-martial:
- (b) The expression "military prisoner" means a person under sentence of imprisonment passed by a court-martial:
- (c) The expression "civil custody" means the custody of the police or other lawful civil authority authorised to retain in custody civil prisoners, and includes confinement in a civil prison:
- (d) The expression "military prison" means a building or part of a building set apart as such under this Act and includes (unless the Secretary of State otherwise directs) an air force prison:

- (e) The expression "detention barrack" means a building or part of a building set apart as such under this Act, and includes (unless the Secretary of State otherwise directs) an air force detention barrack:
- (f) The expression "civil prison" means any prison in the United Kingdom in which offenders sentenced by a civil court to imprisonment for the time being be confined, and any prison in India or a colony in which European offenders so sentenced can for the time being be confined:
- (g) The expression "penal servitude prison" means any prison or place in which a person sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined, either permanently or temporarily, and any prison or place in India or a colony in which persons sentenced to penal servitude by a civil court in India or the colony can for the time being be confined:
 Provided that where there is no such prison or place in a colony the expression "penal servitude prison" shall, as respects that colony, mean a civil prison:
- (h) The expression "competent military authority" means in relation to persons—
 - (i) In the United Kingdom, the Army Council, and any prescribed officer;
 - (ii) in India or a colony any prescribed officer;
 - (iii) in a foreign country, the officer commanding the force to which the person under sentence belonged at the time of his being sentenced, and any prescribed officer:

Provided that different officers may be so prescribed as the competent military authority for different purposes of the said provisions, and provision may be made by rules of procedure as to whether the competent military authority, in relation to any person under sentence, shall be the competent military authority in the place where the sentence was passed or the competent military authority in the place where that person may be.

NOTE.

1. Subs. (1). Under this section a term of penal servitude, imprisonment or detention under sentence by court-martial cannot be made to commence at the expiration of a previous term of penal servitude, imprisonment or detention, but must commence on the day on which the sentence is signed by the president of the court. If, therefore, the court desire to inflict (e.g.) six months' additional imprisonment on a prisoner already in prison undergoing six months' imprisonment, of which three months are unexpired, the court must award nine months, and similarly with respect to sentences of penal servitude and detention. The period of imprisonment or detention must, however, never exceed two consecutive years, whether under one or more sentences; s. 44, proviso (1B).

2. It is essential that the proceedings be dated as well as signed. When, however, a president, after recording the finding and sentence in his own handwriting, omitted to either sign or date the proceedings, it was ruled that even after confirmation he could sign them and date his signature as of the true date of the decision.

3. A term of penal servitude, imprisonment or detention awarded by way of commutation must commence on the date of the original sentence even though such sentence was one of a different character; s. 57 (5).

4. (*Save as otherwise expressly provided in this Act*). See s. 57A with regard to suspension of sentences.

5. Subs. (2). Para. (h). *Prescribed officer*. See R.P. 126.

5. Abroad, on the other hand, a soldier under sentence of penal servitude must necessarily be kept for some length of time in intermediate custody, which may be either military custody or civil custody, and he may be moved from one to the other as occasion requires. When in civil custody he must be kept in an "authorised prison" (s. 62), unless it is not practicable, in which case (s. 60 (5)) he may be confined temporarily in any civil prison with the assent of the authority having jurisdiction over the prison.

6. For commencement of term of penal servitude, see s. 68.

7. The provisions of the Act will continue to apply to a person sentenced to penal servitude during the term of his sentence, though he has been dismissed or discharged from His Majesty's service; s. 158.

59. (1.) Where a sentence of penal servitude is passed by a court-martial in the United Kingdom, the military convict on whom such sentence has been passed, shall, as soon as practicable, be transferred to a penal servitude prison to undergo his sentence according to law, and until so transferred shall be kept in military custody. Execution of sentences of penal servitude passed in the United Kingdom.

(2.) The order of the committing authority (hereafter in this section mentioned) shall be a sufficient warrant for his transfer to a penal servitude prison.

(3.) At any time before his arrival at a penal servitude prison, the discharging authority (hereafter in this section mentioned) may by order discharge the military convict.

(4.) Any one or more of the following authorities shall be the committing authority for the purposes of this section, namely :—

(a.) The Army Council ;

(b.) ;

(c.) The commanding officer of the military convict ; and

(d.) Any other prescribed officer.

(5.) Any one of the following authorities shall be the discharging authority for the purposes of this section, namely :—

(a.) The Army Council ;

(b.) ; and

(c.) Any other prescribed officer.

NOTE.

1. Subs. (1). *Penal servitude prison* ; see s. 62.

2. Subs. (4). *Commanding Officer*. This means the commanding officer as defined by R.P. 129 ; see K.R. 456.

3. *Prescribed officer*. See R.P. 126 (A) for the officers who have been prescribed as committing authorities.

4. For general provisions as to the form of orders of military authorities, see s. 172.

5. For form of order of commitment, see R.P., App. III, Form A, and see generally K.R., 600-606.

6. Subs. (5). The military authorities can only discharge a military convict before he reaches a penal servitude prison and not afterwards.

7. No officer has been prescribed as discharging authority.

8. By A.A.A. 1909, the powers of the Commander-in-Chief and the Adjutant-General as committing and discharging authorities under this section, were transferred to the Army Council.

Part I.

s. 60.

Execution
of sentence
of penal
servitude
passed in
India or
colony.

60. (1.) Where a sentence of penal servitude is passed by a court-martial in India or any colony, the military convict on whom such sentence has been passed shall, as soon as practicable, be transferred to a penal servitude prison to undergo his sentence according to law.

(2.) The order of the committing authority (hereafter in this section mentioned) shall be a sufficient warrant for his transfer to a penal servitude prison.

(3.) The military convict during the period which intervenes between the passing of his sentence and his arrival at the penal servitude prison (in this section referred to as the term of his intermediate custody) shall be deemed to be in legal custody.

(4.) The military convict during his term of intermediate custody may be kept in military custody or in civil custody, or partly in one description of custody and partly in the other, and may from time to time be transferred from military custody to civil custody and from civil custody to military custody as occasion may require, and may, during his conveyance from place to place, or when on board ship or otherwise, be subjected to such restraint as is necessary for his detention and removal.

(5.) "Civil custody," for the purposes of this section, means custody in any authorised prison; nevertheless, where it is not practicable to place the military convict in an authorised prison, he may, by way of civil custody, be confined temporarily in any other prison with the assent of the authority having jurisdiction over that prison.

(6.) The military convict whilst in any prison in which he may legally be placed may be dealt with, in respect of hard labour and otherwise, according to the rules of that prison.

(7.) An order of the removing authority (hereafter in this section mentioned) shall be a sufficient authority for the transfer of the military convict from military custody to civil custody, and from civil custody to military custody, and his removal from place to place, and for his detention in civil custody, and generally for dealing with such convict in such manner as may be thought expedient during the term of his intermediate custody.

(8.) The removing authority during the term of the intermediate custody of the military convict may from time to time by order provide for his being brought before a court-martial, or any civil court, either as a witness or for trial or otherwise; and an order of such authority shall be a sufficient warrant for the delivering him into military custody, and detaining him in custody until he can be returned, and for returning him to the place from whence he is brought, or to such other place as may be determined by the removing authority.

(9.) Any directions of the removing authority relating to the mode in which the military convict is to be dealt with during the term of his intermediate custody may be contained in the same order or in

several orders; and if the orders are more than one, they may be by different officers and at different times.

(10.) At any time before the military convict arrives at a penal servitude prison, the discharging authority (hereafter in this section mentioned) may by order discharge the military convict.

(11.) Any one or more of the following officers shall be the committing authority for the purposes of this section; that is to say :—

(a.) In India—

(i.) The Commander-in-Chief of the forces in India;

* * * * *

(iii.) The Adjutant-General in India;

* * * * *

(b.) In a colony, the officer commanding the forces in that colony; and

(c.) In any case, whether in India or in a colony, the prescribed officer.

(12.) Any one or more of the following officers shall be the removing authority for the purposes of this section; that is to say :—

(a.) Any officer in this section named as the committing authority; also

(b.) The officer commanding the military district or station where the military convict may for the time being be, also

(c.) Any other prescribed officer.

(13.) Any of the following officers shall be the discharging authority for the purposes of this section; that is to say :—

(a.) The officer who confirmed the sentence; also

(b.) Any officer in this section named as the committing authority; also

(c.) Any other prescribed officer.

NOTE.

1. Subs. (1). For definition of India and colony, see s. 190 (21) and (28); but it must be recollected that for the purpose of this section and the other provisions relating to the execution of sentences of penal servitude, the Channel Islands and the Isle of Man are deemed to be colonies; section 187 (2).

2. As to removal to United Kingdom of prisoners sentenced to penal servitude in India or a colony, see the proviso to s. 131.

3. Subs. (5). For definition of *authorised prison*, see s. 62 (2).

4. Subs. (8). The statute 43 Geo. III, c. 140, empowers any of His Majesty's judges to award a writ of *habeas corpus* for bringing any prisoner detained in any prison in England (whether subject to military law or not) before a court-martial for the purpose of giving evidence; and s. 9 of 16 & 17 Vict. c. 30, empowers any of His Majesty's judges to issue a warrant or order for the like purpose, and also for the purpose of bringing up a prisoner to give evidence before a civil court; and s. 11 of 61 & 62 Vict. c. 41, empowers a Secretary of State to order the production of a prisoner at any place where his presence is required in the interest of justice or for the purpose of any public inquiry. This sub-section enables an offender sentenced

Part I. to penal servitude to be brought up by order of the military authority either before a court-martial or a civil court to give evidence, during the interval
 ss. 60-61. between the passing of the sentence and his arrival at the penal servitude prison.

5. Subs. (11), (12), (13). *Prescribed officer.* See R.P. 126 (A), for the other officers who have been prescribed as committing authorities for the purpose of this section.

6. No officer has been "prescribed" as removing or discharging authority under subs. (12) and (13).

7. As to discharge of convicts, see note 6 to s. 59.

8. For general provisions as to the form of orders of military authorities, see s. 172.

9. For form of order of commitment, see R.P. App. III, Form B. See also K.R., 600-606.

Execution of sentence of penal servitude passed in a foreign country.

61. (1.) Where a sentence of penal servitude is passed by a court-martial in any foreign country, the military convict on whom such sentence has been passed shall, as soon as practicable, be transferred to a penal servitude prison for the purpose of undergoing his sentence according to law, and, until so transferred, may be kept in military custody.

(2.) The order of the committing authority (hereafter in this section mentioned) shall be a sufficient warrant for the transfer of the military convict to a penal servitude prison.

(3.) If at any time before his arrival in the United Kingdom the military convict is brought into India or any colony, he may be dealt with by the competent military authority in India or such colony in the same manner in all respects as if he had been there sentenced by court-martial to penal servitude.

(4.) The military convict may at any time before he arrives at any place in the United Kingdom, India, or any colony, be discharged by the discharging authority (hereafter in this section mentioned) having jurisdiction in any place where the military convict may for the time being be.

(5.) Any one or more of the following officers shall be the committing authority for the purposes of this section; that is to say:—

(a.) The officer commanding the army or force with which the military convict was serving at the time of his being sentenced;

(b.) The officer who confirmed the sentence of the court;

(c.) Any other prescribed officer;

(6.) Any committing authority under this section shall also be the discharging authority for the purposes of this section.

NOTE.

1. Subs. (1). *Foreign country.* For definition see s. 190 (24).

2. Subs. (3). See s. 131, and for definition of India and colony see s. 190 (21) and (23); see also s. 187 (2) as to Isle of Man and Channel Islands.

3. *Prescribed officer.* See R.P. 126 (A). An officer who is a committing officer under R.P. 126 does not thereby become a discharging authority for the purposes of this section; see R.P. 126 (A) at end.

4. For general provisions as to the form of orders of military authorities, **Part I.**
see s. 172.

5. For form of order of commitment, see R.P. App. III, Form B. See also **ss. 61-63.**
K.R., 600-606.

62. (1.) A penal servitude prison for the purposes of the provisions of this Act relating to penal servitude means any prison or place in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined, either permanently or temporarily.

General provisions applicable to penal servitude.

(2.) An "authorised prison" for the purposes of the provisions of this Act relating to penal servitude means any prison in India or any colony which the Governor-General of India or the Governor of such colony may, with the concurrence of a Secretary of State, have appointed as a prison in which military convicts may, during the period of their intermediate custody, be confined.

(3.) After a military convict has arrived at a penal servitude prison to undergo his sentence, he shall be dealt with in the like manner as an ordinary civil prisoner under sentence of penal servitude.

NOTE.

Subs. (1). See, however, proviso to s. 131 as to persons sentenced in India or a colony.

63. (1.) Where a sentence of imprisonment is passed by court-martial, the person on whom that sentence has been passed (in the provisions of this Act relating to imprisonment referred to as a military prisoner) shall undergo the term of his imprisonment either in military custody, or in a detention barrack, or in a public prison, or partly in one way and partly in another, and where a sentence of detention is passed by a court-martial or a commanding officer, the person on whom that sentence has been passed (in the provisions of this Act relating to detention referred to as a soldier undergoing detention) shall undergo the term of his detention either in military custody or in a detention barrack, or partly in one way and partly in the other, but not in a prison.

Execution of sentences of imprisonment and detention.

(2.) Any person liable to be imprisoned in a military prison may be confined in a detention barrack.

(3.) The order of the committing authority hereafter mentioned shall be a sufficient warrant for the transfer of a military prisoner to a public prison, or a detention barrack, or a soldier undergoing detention to a detention barrack.

(4.) A military prisoner while in a public prison shall be confined, kept to hard labour, and otherwise dealt with in the like manner as an ordinary prisoner under a like sentence of imprisonment; and where the hospital or place for the reception of sick persons in a public prison or a detention barrack is detached from the prison or detention barrack, a military prisoner or a soldier undergoing detention may be detained in that hospital or place, and conveyed to or from the same as circumstances require.

Part I.

s. 63.

(5.) A military prisoner or a soldier undergoing detention during his conveyance from place to place, or when on board ship or otherwise, may be subjected to such restraint as is necessary for his safe custody and removal.

(6.) The discharging authority hereafter mentioned may, at any time during the period of the imprisonment of a military prisoner or of the detention of a soldier undergoing detention, by order discharge the prisoner or soldier.

(7.) The committing authority or any other prescribed authority may at any time by order remove a military prisoner from one public prison or detention barrack to another prison or detention barrack, or a soldier undergoing detention from one detention barrack to another, so that he be not removed from a prison or detention barrack in the United Kingdom to a prison or detention barrack elsewhere.

(8.) The removing authority hereafter mentioned may at any time during the period of the imprisonment of a military prisoner or of the detention of a soldier undergoing detention, from time to time by order provide for his being brought before a court-martial, or any civil court, either as a witness, or for trial or otherwise, and an order of such authority shall be a sufficient warrant for delivering him into military custody and detaining him in custody until he can be returned and for returning him to the place from whence he is brought, or to such other place as may be determined by the removing authority.

NOTE.

1. Ss. 63 to 66 provide for the execution of sentences of imprisonment and of sentences of detention.

2. The effect of the provisions is that a person under sentence of imprisonment, if sentenced in the United Kingdom, may be kept either in military custody, or in a detention barrack, or in a public prison—that is to say, any prison in the United Kingdom in which prisoners can be confined under a sentence of a civil court, see s. 64 (1); or in a military prison, that is to say, any building set apart as such by the Secretary of State under s. 133.

3. If sentenced in India or a colony, he may be kept in military custody, or in a detention barrack, or in some “authorised prison” in the country where sentenced, i.e., a civil prison appointed as a prison for military prisoners, with the concurrence of the Secretary of State, if in India by the Governor-General, and if in a colony by the Governor of the colony (s. 65 (2)); or in a military prison—that is to say, any building set apart as such in India by the Governor-General, and in a colony by the Secretary of State, under s. 133.

4. If sentenced in a foreign country, then if and as soon as he is brought into the United Kingdom, India, or any colony, the provisions of the Act apply as if he had been sentenced in the United Kingdom, in India, or a colony, as the case may be; s. 66.

5. A prisoner may be removed from a prison or detention barrack out of the United Kingdom to a prison or detention barrack in the United Kingdom, and from one public prison or detention barrack to another public prison or

detention barrack in the United Kingdom (subs. (7)); but he cannot be removed from a prison or detention barrack in the United Kingdom to a prison or detention barrack elsewhere (subs. (7)); and if he has remained in military custody and not been committed to a prison or detention barrack in the United Kingdom, and is removed from the United Kingdom, he cannot be committed to a prison or detention barrack elsewhere. Prisoners, therefore, in the United Kingdom, if required to be removed, can only be removed under s. 67. A prisoner sentenced in India or a colony may be removed to a detention barrack wherever situate (subs. (7)), or to a military prison wherever situate if allowed by regulation (see R.P. 130), but can only be removed to an "authorised prison" in another colony if such prison has been "prescribed" for this purpose by a rule (s. 65 (1) (c), R.P. 130). With reference to these sections, it must be recollected that under s. 187 (2) the Isle of Man and Channel Islands, and under s. 190 (23) protectorates and Cyprus are for these purposes colonies.

6. Where a unit moves from one colony to another and takes its prisoners with it, they cannot be committed under their old sentence to a prison at the place of destination of the regiment unless such prison has been prescribed, or is a military prison, and in the latter case the regulations on the subject must be observed.

7. As regards a soldier sentenced to detention, the effect of the provisions is that he may be kept either in military custody or in a detention barrack, and may be removed from any detention barrack to any other wherever situate, except that he cannot be removed from a detention barrack in the United Kingdom to one elsewhere (subs. (7)).

8. As to a prisoner sentenced to more than twelve months' imprisonment or detention in India or a colony, see s. 131.

9. Subs. (1). The expression detention barrack includes a branch detention barrack, and military confinement includes detention in a barrack detention room, and a soldier may be ordered to perform hard labour in these places; but a soldier under sentence exceeding the limit for the time being prescribed for sentences to be passed in detention rooms or in branch detention barracks, must only be committed to such detention rooms or barracks, pending his removal to a civil prison, or a military prison, or a detention barrack. K.R., 607, and see 647-660.

10. Subs. (6). *Discharging authority*. It will be observed that the discharging authority under this section will sometimes have no power to remit the sentence under s. 57. It is, however, desirable that a prisoner or soldier undergoing detention should not be discharged before the expiration of his sentence without his sentence being remitted. An officer, therefore, who has power to discharge a person, but not to remit the sentence, should apply to some authority having power to remit the sentence, and obtain that remission before he orders the discharge. If, in a case of necessity, he discharges any person under sentence before making such application, he should apply immediately for the remission of the sentence.

11. An escaped prisoner or a soldier escaped from detention may, when captured, be recommitted, the former to prison or a detention barrack, and the latter to a detention barrack, to undergo the remainder of his sentence; but if it is desired to punish him for the escape, a charge must be preferred, under s. 22.

12. *Committing authority—Discharging authority—Removing authority*. See s. 64.

13. See, generally, as to military prisoners, K.R., 607-660.

14. For forms of order of commitment, &c., relating to military prisoners and soldiers undergoing detention respectively, see R.P. App. III, Forms C—U, and K.R. 607-617.

Part I.

s. 64.

Supplemental provisions as to sentences of imprisonment or detention passed or being undergone in the United Kingdom.

64. Where a sentence of imprisonment or detention is passed or is being undergone in the United Kingdom, then for the purposes of the provisions of this Act relating to imprisonment or detention, as the case may be—

- (1.) The expression "public prison" means any prison in the United Kingdom in which offenders sentenced by a civil court to imprisonment can for the time being be confined.
- (2.) Any one or more of the following authorities shall be the committing authority :—
 - (a.) The Army Council ;
 - (b.) ;
 - (c.) The officer who confirmed the sentence ;
 - (d.) The commanding officer of the military prisoner or soldier undergoing detention ; and
 - (e.) Any other prescribed officer.
- (3.) Any one of the following authorities shall be the discharging authority :—
 - (a.) The Army Council ;
 - (b.) ;
 - (c.) The officer commanding the military district in which the prisoner or soldier undergoing detention may be ;
 - (d.) The officer who confirmed the sentence ;
 - (e.) Any other prescribed officer ; also,
 - (f.) Where the sentence was passed by the commanding officer, the commanding officer.
- (4.) Any one or more of the following authorities shall be the removing authority :—
 - (a.) The Army Council ;
 - (b.) ;
 - (c.) The officer commanding the military district in which the prisoner or soldier undergoing detention may be ;
 - (d.) Any other prescribed officer ; also,
 - (e.) Where the sentence was passed by the commanding officer, the commanding officer.

NOTE.

1. By A.A.A. 1909 the powers formerly exercised under this section by the Commander-in-Chief and the Adjutant-General were transferred to the Army Council.

2. Para. (1). *Public prison*. This includes a military prison (s. 133 (1)), but not a detention barrack.

3. Para. (2). *Commanding officer*. This means the C.O. as defined by R.P. 129. See K.R., 456.

4. The "prescribed officer" for the purposes of paras. (2) (3) and (4) is the officer prescribed by R.P. 126 (A) (D) and (B), respectively.

65. Where a sentence of imprisonment or detention is passed or being undergone in India or any colony, then, for the purposes of the provisions of this Act relating to imprisonment or detention, as the case may be—

Part I.

s. 65.

Supplemental provision as to sentences of imprisonment or detention passed or being undergone in India or a colony.

- (1.) The expression "public prison" means any of the following prisons ; that is to say,
 - (a.) where the sentence was passed in India, any authorised prison in India ;
 - (b.) where the sentence was passed in a colony, any authorised prison in that colony ;
 - (c.) any such authorised prison in any part of His Majesty's dominions other than that in which the sentence was passed as may be prescribed ; and
 - (d.) any public prison in the United Kingdom as above defined for the purpose of the provisions of this Act relating to imprisonment in the United Kingdom :
- (2.) "Authorised prison" means any prison in India or any colony which the Governor-General of India or the Governor of such colony, with the concurrence of the Secretary of State may have appointed as a prison in which military prisoners may be confined :
- (3.) A military prisoner may temporarily be confined in a prison not a public prison, with the assent of the authority having jurisdiction over such prison. And a military prisoner who is to undergo his sentence in the United Kingdom, until he reaches a prison in the United Kingdom in which he is to undergo his sentence, may be kept in military custody or in civil custody, and partly in one description of custody and partly in the other, and may from time to time be transferred from military custody to civil custody, and from civil custody to military custody, as occasion may require.
- (4.) Any one or more of the following officers shall be the committing authority ; that is to say,
 - (a.) In India—
 - (i.) The Commander-in-Chief of the forces in India ;
 - * * * * *
 - (iii.) The Adjutant-General in India ; and
 - * * * * *
 - (b.) In a colony, the officer commanding the forces in that colony ; and
 - (c.) In any case, whether in India or in a colony—
 - (i.) The officer who confirmed the sentence ;
 - (ii.) The commanding officer of the military prisoner or soldier undergoing detention ; and
 - (iii.) Any other prescribed officer :

- Part I. (5.) Any of the following officers shall be the discharging authority:
 ss. 65-66. (a.) The officer commanding the military district or station in which the prisoner or soldier undergoing detention may be ;
 (b.) Any officer in this section named as a committing authority, with this exception, that the commanding officer shall only be a discharging authority where the sentence was passed by a commanding officer ; and
 (c.) Any other prescribed officer.
- (6.) Any one or more of the following officers shall be the removing authority :
 (a.) Any officer in this section named as a committing authority ;
 (b.) The officer commanding the military district or station where the prisoner or soldier undergoing detention may be ; and
 (c.) Any other prescribed officer.

NOTE.

1. Para. (1). *Public prison* includes a military prison, s. 133, but not a detention barrack.
2. For definitions of India and colony, see s. 190 (21) and (23) ; and as to the Isle of Man and Channel Islands, see s. 187 (2).
3. *Prescribed*. See R.P. 130 and note. See also s. 134, and K.R., 610, 611.
4. Para. (2). *Authorised prison* includes a military prison in India, s. 133, but not a detention barrack.
5. Para. (4). *Commanding officer*. This means the commanding officer as defined by R.P. 129 ; see K.R., 456.
6. *Prescribed officer*. See R.P. 126 (A).
7. Para. (5.) *Prescribed officer*. See R.P. 126 (D).
8. See generally as to orders and warrants of officers, s. 172 and note.

Supple-
 mental pro-
 vision as to
 sentences of
 imprison-
 ment and
 detention
 passed
 in a foreign
 country.

66. Where a sentence of imprisonment or detention is passed by a court-martial or commanding officer in any foreign country, then if and as soon as the military prisoner or soldier undergoing detention on whom such sentence has been passed is brought into the United Kingdom or India, or any colony, the provisions of this Act shall apply in the same manner in all respects as if the sentence of imprisonment or detention had been passed in the United Kingdom, India, or any colony, as the case may be, with this addition, that the officer commanding the army or force to which the military prisoner or soldier undergoing detention belonged at the time of his being sentenced shall also be deemed to be a committing authority.

NOTE.

1. *Imprisonment*. It must be remembered that a regimental court-martial and a commanding officer can no longer pass a sentence of imprisonment.
2. *Commanding officer*. See note 2 to s. 59.
3. *Foreign country ; India ; Colony*. For definitions, see s. 190 (21), (23), (24) ; and as to Isle of Man and Channel Islands, see s. 187 (2).

67. (1.) The competent military authority (hereafter in this section mentioned) may give directions for the delivery into military custody of any military prisoner or soldier undergoing detention for the time being undergoing his sentence of imprisonment or detention, and the removal of such prisoner or soldier, whether with his corps or separately, to any place beyond the seas where the corps, or any part thereof, to which for the time being he belongs, is serving or under orders to serve.

Part 1.

s. 67

Removal of
prisoner or
soldier
undergoing
detention to
place where
corps is
serving.

(2.) The directions of such competent military authority or an order of the removing authority issued in pursuance of such directions, shall be sufficient authority for the removal of such prisoner or soldier from the prison or detention barrack in which he is confined, and for his conveyance in military custody to any place designated, and for his intermediate custody during such removal and conveyance.

(3.) The competent military authority may further give directions for the discharge of the prisoner or soldier, either conditionally or unconditionally at any time while he is in military custody under this section.

(4.) For the purposes of this section any one or more of the following authorities shall be the competent military authority:—

(a.) In the United Kingdom—

(i.) The Army Council ;

* * * ; and

(iii.) Any other prescribed officer.

(b.) In India—

(i.) The Commander-in-Chief of the forces in India ;

* * * *

(iii.) The Adjutant-General in India ; and

* * * *

(c.) In a colony, the officer commanding the forces in that colony ; and

(d.) In any case, whether in India or in a colony, the prescribed officer.

NOTE.

1. The object of this section is to enable soldiers who are undergoing sentences of imprisonment or detention to be removed in custody for service abroad. Soldiers sentenced for military offences (desertion, for instance), may in many cases be given a fresh opportunity of recovering their characters by being at once removed to a foreign station. The section will also prevent soldiers who commit offences immediately before embarkation for service from escaping all punishment ; but it gives no authority to commit such offenders to any public prison on their arrival at the foreign station.

2. *Subs.* (4). By A.A.A. 1909 the powers of the Commander-in-Chief and Adjutant-General under this section were transferred to the Army Council.

3. *Prescribed officer.* See R.P. 126 (B).

4. For definition of India and colony see s. 190 (21) and (28) ; and as to the Isle of Man and Channel Islands, see s. 187, (2).

- Part I.** **68. (1.)** The term of penal servitude, imprisonment, or detention to which a person is sentenced by a court-martial, whether the sentence has been revised or not, and whether the person is already undergoing sentence or not, shall be reckoned to commence on the day on which the original sentence and proceedings were signed by the president of the court-martial.
- ss. 68-70.** Commencement of term of penal servitude, imprisonment, or detention.
- (2.)** An offender under this Act shall not be subject to imprisonment or detention for more than two consecutive years, whether under one or more sentences.

NOTE.

1. Under this section a term of penal servitude, imprisonment, or detention under sentence by court-martial cannot be made to commence at the expiration of a previous term of penal servitude, imprisonment, or detention, but must commence on the day on which the sentence is signed by the president of the court. If, therefore, the court desire to award imprisonment (say six months) on a prisoner already in prison for six months' imprisonment, of which three months are unexpired, the court must award nine months, and similarly with respect to sentences of penal servitude and detention.

2. The period of imprisonment or detention which a soldier is to suffer, whether under one sentence or several sentences, must never exceed two consecutive years. This restriction applies where a soldier is tried at the expiration of a sentence of imprisonment or detention for an offence committed during that sentence; K.R., 584. Any period passed in military custody or in imprisonment by the civil power between two periods of imprisonment, or of detention, or between a period of imprisonment and a period of detention, or *vice versa*, is to be reckoned as part of the term. But where there is even a single day's actual freedom, whether by release or escape, the continuity is broken.

3. Except in cases under s. 41 (5) for which a maximum sentence of penal servitude has been fixed by law (see table at the end of Ch. VII) it is competent for a court-martial, in cases where it is authorised to impose a term of penal servitude, to award penal servitude for life or any term not less than 3 years.

4. As to commencement on commutation, see note 10 to s. 57.

MISCELLANEOUS.

Articles of War and Rules of Procedure.

Power of His Majesty to make Articles of War.

69. It shall be lawful for His Majesty to make Articles of War for the better government of officers and soldiers, and such Articles shall be judicially taken notice of by all judges and in all courts whatsoever: Provided that no person shall, by such Articles of War, be subject to suffer any punishment extending to life or limb, or to be kept in penal servitude, except for crimes which are by this Act expressly made liable to such punishment as aforesaid, or be subject, with reference to any crimes made punishable by this Act, to be punished in any manner which does not accord with the provisions of this Act.

Power of His Majesty to make rules of procedure.

70. (1.) Subject to the provisions of this Act His Majesty may, by rules to be signified under the hand of a Secretary of State, from time to time make, and when made repeal, alter or add to

provisions in respect of the following matters or any of them ; that is to say,

Part I.
ss. 70-71.

- (a.) The assembly and procedure of courts of inquiry ;
 - (b.) The convening and constituting of courts-martial ;
 - (c.) The adjournment, dissolution, and sittings of courts-martial ;
 - (d.) The procedure to be observed in trials by court-martial ;
 - (e.) The confirmation and revision of the findings and sentences of courts-martial ; and enabling the authority having power under section fifty-seven of this Act to commute sentences to substitute a valid sentence for an invalid sentence of a court-martial ;
 - (f.) The carrying into effect sentences of courts-martial ;
 - (g.) The forms of orders to be made under the provisions of this Act relating to courts-martial, penal servitude, imprisonment, or detention ;
 - (h.) Any matter in this Act directed to be prescribed ;
 - (i.) Any other matter or thing expedient or necessary for the purpose of carrying this Act into execution so far as relates to the investigation, trial, and punishment of offences triable or punishable by military law :
- (2.) Provided always, that no such rules shall contain anything contrary to or inconsistent with the provisions of this Act.
- (3.) All rules made in pursuance of this section shall be judicially noticed.
- (4.) All rules made in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if Parliament be not then sitting, as soon as practicable after the beginning of the then next session of Parliament.
- (5.) The rules as to the procedure of courts of inquiry may provide for evidence being taken on oath, and may empower courts of inquiry to administer oaths for that purpose.

Command.

71. (1.) For the purpose of removing doubts as to the powers of command vested or to be vested in officers and others belonging to His Majesty's forces, it is hereby declared that His Majesty may, in such manner as to His Majesty may from time to time seem meet, make regulations as to the persons to be invested as officers, or otherwise, with command over His Majesty's forces, or any part thereof, or any person belonging thereto, and as to the mode in which such command is to be exercised ; provided that command shall not be given to any person over a person superior in rank to himself.

Removal of doubts as to military command.

(2.) Nothing in this section shall be deemed to be in derogation of any power otherwise vested in His Majesty.

Part I.

NOTE.

ss. 71-73.

1. This section removes all doubts as to the power of His Majesty to regulate the command by officers of the regular forces over those forces, or over any portion of the auxiliary forces, and the command by officers of any portion of the auxiliary forces over any other portion of those forces, or over any portion of the regular forces.

2. The proviso applies only to rank in relation to military command, and does not prevent an officer from having military command over an officer with higher relative rank, but no military command.

Inquiry as to and Confession of Desertion.

Inquiry by
court on
absence of
soldier.

72. (1.) When any soldier has been absent without leave from his duty for a period of twenty-one days, a court of inquiry may as soon as practicable be assembled, and inquire in the prescribed manner on oath or solemn declaration (which such court is hereby authorised to administer) respecting the fact of such absence, and the deficiency (if any) in the arms, ammunition, equipments, instruments, regimental necessaries, or clothing of the soldier; and if satisfied of the fact of such soldier having absented himself without leave or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency (if any), and the commanding officer of the absent soldier shall enter in the regimental books a record of the declaration of such court.

(2.) If the absent soldier does not afterwards surrender or is not apprehended, such record shall have the legal effect of a conviction by court-martial for desertion.

NOTE.

1. In the event of a soldier being absent without leave for a period of 21 days, a court of inquiry must be assembled at once, unless he has been taken into custody; K.R., 678; but this does not apply in the case of absconded recruits. In calculating the period of 21 days, the day on which the soldier became absent and the day on which the court is assembled must be excluded from the reckoning.

2. The declaration of the court should contain—

The place from which the man absented himself; and

The date of the deficiency, if any, and the place where it occurred.

The procedure of such a court is detailed in R.P. 125: under that Rule and this section the witnesses will be sworn, but not the members of the court.

3. As to enquiry into absence from duty of a man of the Territorial Force, when subject to military law, see T.R.F. Act s. 24 (4).

Confession
by soldier of
desertion or
fraudulent
enlistment.

73. (1.) Where a soldier signs a confession that he has been guilty of desertion or of fraudulent enlistment, a competent military authority may, by the order dispensing with his trial by a court-martial, or by any subsequent order, award the same forfeitures and the same deductions from pay (if any) as a court-martial could award for the said offence, or as are consequential upon conviction by a court-martial for the said offence, except such of them as may be mentioned in the order.

(2.) If upon any such confession, evidence of the truth or falsehood of such confession cannot then be conveniently obtained, the record of such confession, countersigned by the commanding officer of the soldier, shall be entered in the regimental books, and such soldier shall continue to do duty in the corps in which he may then be serving, or in any other corps to which he may be transferred, until he is discharged or transferred to the reserve, or until legal proof can be obtained of the truth or falsehood of such confession.

(3.) The competent military authority for the purposes of this section means the Army Council or any prescribed general officer; or, in the case of India, the Commander-in-Chief of the forces in India, or such officer as the Commander-in-Chief of the forces in India, with the approval of the Governor-General of India in Council, may appoint, and in the case of a colony and elsewhere the general or other officer commanding the forces, subject in the case of India, or a colony, or elsewhere, to any directions given by the Army Council.

NOTE.

1. Before accepting a confession of desertion or fraudulent enlistment signed by a soldier, care should be taken to ascertain that he fully understands the nature and consequences of his act.

2. If he has not completed 12 years' service, i.e., the term of his original enlistment, he will forfeit the whole of his prior service, and be liable to serve for the original term of his enlistment reckoned from the date of his trial being dispensed with; and the forfeited service can only be restored by the Army Council; s. 79 (proviso); see also K.R., 273. A soldier serving on a re-engagement at the time of confessing will forfeit all prior service rendered during the period of such re-engagement. See Notes to ss. 79 and 84.

3. The deductions from pay are regulated by s. 138 and the Pay Warrant.

4. For definition of India and colony, see s. 190 (21) and (23); and as to the Isle of Man and Channel Islands, see s. 187 (2).

5. *Prescribed general officer*: See R.P. 126 (F).

6. See also K.R., 479, 541-546.

Provost Marshal.

74. (1.) For the prompt repression of all offences which may be committed abroad, provost-marshals with assistants may from time to time be appointed by the general order of the general officer commanding a body of forces. Provost-marshal.

(2.) A provost-marshal or his assistants may at any time arrest and detain for trial persons subject to military law committing offences, and may also carry into execution any punishments to be inflicted in pursuance of a court-martial, but shall not inflict any punishment of his or their own authority.

Provided that a provost-marshal and his assistants shall, as respects any soldier in his or their custody and undergoing field punishment, have the same powers as the governor of a military prison.

NOTE.

1. See generally as to provost-marshal, Ch. IV, para. 39.

2. *The governor of a military prison.* The powers of such a governor are prescribed by the rules made under s. 138.

Part I.

Restitution of Stolen Property.

s. 75.
Power as to
restitution
of stolen
property.

75. (1.) Where a person has been convicted by court-martial of having stolen, embezzled, received, knowing it to be stolen, or otherwise unlawfully obtained, any property, and the property or any part thereof is found in the possession of the offender, the authority confirming the finding and sentence of such court-martial, or the Army Council, may order the property so found to be restored to the person appearing to be the lawful owner thereof.

(2.) A like order may be made with respect to any property found in the possession of such offender, which appears to the confirming authority or the Army Council to have been obtained by the conversion or exchange of any of the property stolen, embezzled, received, or unlawfully obtained.

(3.) Moreover, where it appears to the confirming authority or the Army Council from the evidence given before the court-martial, that any part of the property stolen, embezzled, received, or unlawfully obtained was sold to or pawned with any person without any guilty knowledge on the part of the person purchasing or taking in pawn the property, the authority or the Army Council may, on the application of that person, and on the restitution of the said property to the owner thereof, order that out of the money (if any) found in the possession of the offender, a sum not exceeding the amount of the proceeds of the said sale or pawning shall be paid to the said person purchasing or taking in pawn.

(4.) An order under this section shall not bar the right of any person, other than the offender, or any one claiming through him, to recover any property or money delivered or paid in pursuance of an order under this section from the person to whom the same is so delivered or paid.

NOTE.

1. By A.A.A., 1909, the Army Council was substituted in this section for the Commander-in-Chief.

2. Subs. (1). Where the offender occupies a house, property found in that house is *prima facie* in his possession.

3. The stealing or embezzlement of property does not alter the ownership, and therefore *prima facie* the person from whom property has been stolen or embezzled is the lawful owner of it.

4. Care must be taken to report to the proper authority any circumstances which would justify him in making an order under this section.

5. As to stoppages in respect of property stolen or unlawfully obtained, &c., see K.R., 586.

PART II.

ENLISTMENT.

For history of service in the army, *see* Ch. IX, and for general explanation of this Part *see* Ch. X.

For regulations as to recruiting, transfers, discharge and service, *see* K.R., 262 *et seq.*, and the Regulations for Recruiting.

Part II.

ss. 76-78.

Period of Service.

76. A person may be enlisted to serve His Majesty as a soldier of the regular forces for a period of twelve years, or for such less period as may be from time to time fixed by His Majesty, but not for any longer period, and the period for which a person enlists is in this Act referred to as the term of his original enlistment.

NOTE.

The terms of enlistment for the various arms of the service, and conditions of transfer, are prescribed by the Regulations for Recruiting.

77. The original enlistment of a person under this Act shall be as follows, either—

Terms of original enlistment.

- (1.) For the whole of the term of his original enlistment in army service ; or
- (2.) For such portion of the term of his original enlistment as may be from time to time fixed by the Army Council and specified in the attestation paper, in army service, and for the residue of the said term in the reserve.

NOTE.

The Army Council was substituted for the Secretary of State in this and several subsequent sections by A.A.A., 1909.

78. (1.) The Army Council may from time to time, by general or special regulations, vary the conditions of service, so as to permit a soldier of the regular forces in army service, with their assent, either—

Change of conditions of service.

- (a.) To enter the reserve at once for the residue unexpired of the term of his original enlistment ; or
- (b.) To extend his army service for all or any part of the residue unexpired of such term ; or
- (c.) To extend the term of his original enlistment up to the period of twelve years or any shorter period.

(2.) The Army Council may from time to time by general or special regulations vary the conditions of service so as to permit a man in the reserve, with their assent, to re-enter upon army service for all or any part of the residue unexpired of the term of his original enlistment, or for any period of time not exceeding twelve years in the whole from the date of his original enlistment.

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ss. 78-79.

NOTE.

1. As to transfer of a man to the reserve before the period of his army service has expired, see s. 89.

2. As regards extension of service with the colours see K.R. 262, 263, and Ch. X, para. 6.

Reckoning
and for-
feiture of
service.

79. In reckoning the service of a soldier of the regular forces for the purpose of discharge or of transfer to the reserve—

(1.) The service shall begin to reckon from the date of his attestation; but

(2.) Where a soldier of the regular forces has been guilty of any of the following offences:

(a.) Desertion from His Majesty's service; or

(b.) Fraudulent enlistment;

then either upon his conviction by court-martial of the offence, or (if having confessed the offence he is liable to be tried) upon his trial being dispensed with by order of the competent military authority, the whole of his prior service shall be forfeited, and he shall be liable to serve as a soldier of the regular forces for the term of his original enlistment, reckoned from the date of such conviction or such order dispensing with trial, in like manner as if he had been originally attested at that date:

Provided that the Army Council may restore all or any part of the service forfeited under this section to any soldier who may perform good and faithful service, or may otherwise be deemed by the Army Council to merit such restoration of service, or may be recommended for such restoration of service by a court-martial.

NOTE.

1. Para. (2). A soldier will not forfeit service towards discharge for any absence or for any period of imprisonment or detention, but if he is convicted of desertion or fraudulent enlistment he will forfeit all his prior service, and begin again as if he had enlisted or re-engaged at the date of his conviction, all variations of his original conditions of service such as extensions of service being automatically cancelled. The Army Council, however, may restore all or part of the forfeited service to a soldier where either the soldier performs good and faithful service, or a court-martial recommends it. See K.R., 278.

2. The paragraph provides not only for forfeiture of service on conviction, but also in cases in which on the confession of the offender trial is dispensed with (see s. 78) by order of the competent military authority. The paragraph applies to the reckoning of service for purposes of discharge or transfer to the reserve only. Forfeiture of ordinary pay is dealt with in s. 138, while forfeiture of service towards good conduct pay or pension is regulated by the Pay Warrant.

3. If an army reserve man enlists and is sent back to the reserve, he does not forfeit any part of his service, but if retained with the colours, his service will be reckoned from the date of his improper attestation; see K.R., 274.

4. *If he is liable to be tried.* These words exclude the application of the paragraph in the case of a soldier who after three years of exemplary service has made a confession of desertion when not on active service, or of fraudulent enlistment. Under s. 161 a soldier making such a confession cannot be tried or punished, and it is not intended that he should forfeit his service under this section; but if the offence to which he confesses was that of fraudulent enlistment, he will under s. 161 forfeit all service prior to the date of his fraudulent enlistment. (See note 1 to that section.) Under the proviso to that section, on the other hand, the Army Council have the same power of restoring services so forfeited as they have under this section; K.R., 278.

Proceedings for Enlistment.

80. (1.) Every person authorised to enlist recruits in the regular forces (in this Act referred to as the "recruiter") shall give to every person offering to enlist a notice in the form for the time being authorised by the Army Council, stating the general requirements of attestation and the general conditions of the contract to be entered into by the recruit, and directing such person to appear before a justice of the peace either forthwith or at the time and place therein mentioned.

Mode of
enlistment
and attesta-
tion.

(2.) Upon the appearance before a justice of the peace of a person offering to enlist, the justice shall ask him whether he has been served with and understands the notice and whether he assents to be enlisted, and shall not proceed with the enlistment if he considers the recruit under the influence of liquor.

(3.) If he does not appear before a justice, or on appearing does not assent to be enlisted, no further proceedings shall be taken.

(4.) If he assents to be enlisted—

(a.) The justice, after cautioning such person that if he makes any false answer to the questions read to him he will be liable to be punished as provided by this Act, shall read or cause to be read to him the questions set forth in the attestation paper for the time being authorised by the Army Council and shall take care that such person understands each question so read, and after ascertaining that the answer of such person to each question has been duly recorded opposite the same in the attestation paper, shall require him to make and sign the declaration as to the truth of those answers set forth in the said paper, and shall then administer to him the oath of allegiance contained in the said paper :

(b.) Upon signing the declaration and taking the oath, such person shall be deemed to be enlisted as a soldier of His Majesty's regular forces :

(c.) The justice shall attest by his signature, in manner required by the said paper, the fulfilment of the requirements as to attesting a recruit, and shall deliver the attestation paper, duly dated, to the recruiter :

Part II.
ss. 80-1.

(d.) The fee for the attestation of a recruit, and for all acts and things incidental thereto, shall be one shilling and no more, and shall be paid to the clerk of the justice:

(e.) The officer who finally approves of a recruit for service shall, at his request, furnish him with a certified copy of his attestation paper.

(5.) The date at which the recruit signs the declaration and takes the oath in this section in that behalf mentioned shall be deemed to be the date of the attestation of such recruit.

(6.) The competent military authority, if satisfied that there is any error in the attestation paper of a recruit, may cause the recruit to attend before some justice of the peace, and that justice, if satisfied that such error exists, and is not so material as to render it just that the recruit should be discharged, may amend the error in the attestation paper, and the paper as amended shall thereupon be deemed as valid as if the matter of the amendment had formed part of the original matter of such paper.

(7.) Where the regulations of the Army Council under this part of this Act require duplicate attestation papers to be signed and attested, this section shall apply to both such duplicates, and in the event of any amendment of an attestation paper the amendment shall be made in both of the duplicate attestation papers.

NOTE.

1. A man is under this Act enlisted by the act of attestation. The recruiter will give the form, authorised by the Army Council, directing the recruit to appear before a justice. The man, if he fails to appear, cannot be arrested as a deserter. No account will be taken of any man before he is actually attested before a justice. As to the persons (including certain officers) entitled to exercise the functions of a justice in the United Kingdom and elsewhere, see s. 94. The attestation is required to be in duplicate, K.R., 1902-1911. After attestation a man can only get off his contract of enlistment by purchasing his discharge under s. 81 (*q.v.*).

2. Subs. (6). *Competent military authority.* As to the meaning of this expression, see s. 101 and R.P. 128.

Power of
recruit to
purchase
discharge.

81. If a recruit within three months after the date of his attestation pays for the use of His Majesty a sum not exceeding ten pounds, he shall be discharged with all convenient speed, unless he claims such discharge during a period when soldiers in army service who otherwise would be transferred to the reserve are required by a proclamation of His Majesty in pursuance of this Act to continue in army service, in which case he may be retained in His Majesty's service during that period, and at the termination thereof shall, if he so require it, on the payment then of the said sum, be discharged.

Appointment to Corps and Transfers.

82. (1.) Recruits may, in pursuance of any general or special regulations from time to time made by the Army Council, be enlisted for service in particular corps of the regular forces, but save as is provided by such regulations, if any, recruits shall be enlisted for general service.

(2.) The competent military authority shall as soon as practicable appoint a recruit, if enlisted for service in a particular corps, to that corps, and if enlisted for general service, to some corps of the regular forces.

NOTE.

1. Subs. (2). *Appoint.* It may be convenient at this point to state the meanings attaching to the words "appoint" "post" "transfer" and "attach."

2. A soldier on attestation is "appointed" to a corps out of which he cannot be moved without his consent, except as mentioned in the Act. This appointment differs from the appointment of a soldier to a particular office, inasmuch as it does not, like the latter appointment, require the consent of the soldier.

3. Any disposition of a soldier within his corps which can be legally effected independently of his consent is termed "posting." He may be posted—

in the infantry, to a regular battalion of his regiment, to the regular establishment of a special reserve battalion of that regiment, or to the permanent staff of any Territorial Force unit belonging to that regiment.

in the Royal Horse and Royal Field Artillery, to any battery within that corps and in the Royal Garrison Artillery to any company of the Royal Garrison Artillery.

in the Royal Engineers, to any squadron, troop or company.

in any other corps, to any company or station according to their respective sub-divisions.

4. "Transfer" is a disposition of the soldier which moves him out of the corps to which he was originally appointed, or to which, for the time being he belongs, either with his consent or under special conditions provided by the Act. Thus if a soldier is moved—

in the case of infantry, out of his regiment to any other regiment or to any other corps; or

in the case of the Royal Artillery, out of the Royal Horse and Royal Field Artillery, to the Royal Garrison Artillery or to any other corps; or out of the Royal Garrison Artillery to the Royal Horse or Royal Field Artillery or to any other corps; or

in the case of the Royal Engineers, out of the Royal Engineers to any other corps; or

in the case of any other corps, out of his corps into any body outside his corps;

he will be "transferred."

5. "Attach" means removing temporarily a soldier either with or without his consent from his own unit and placing him with another unit, without affecting in any way his status in the first-mentioned unit.

6. *Competent military authority.* As to the meaning of this expression, see s. 101 and R.P. 128.

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s. 53.
Effect of
appointment to a
corps and
provision
for
transfers.

53. A soldier of the regular forces, whether enlisted for general service or not, when once appointed to a corps, shall serve in that corps for the period of his army service, whether during the term of his original enlistment or during the period of such re-engagement as is in this Act mentioned, unless transferred under the following provisions :—

(1.) A soldier of the regular forces enlisted for general service may, within three months after the date of his attestation, be transferred to any corps of the regular forces of the same arm or branch of the service by order of the competent military authority.

(2.) A soldier of the regular forces may at any time with his own consent be transferred by order of the competent military authority to any corps of the regular forces.

(3.) Where a soldier of the regular forces is in pursuance of any of the foregoing provisions transferred to a corps in an arm or branch different from that in which he was previously serving, the competent military authority may by order vary the conditions of his service so as to correspond with the general conditions of service in the arm or branch to which he is transferred.

(4.) A soldier of the regular forces in any branch of the service may be transferred by order of the competent military authority to any corps of the same branch which is serving in the United Kingdom in either of the following cases :—

(a.) when he has been invalided from service beyond the seas ; or

(b.) when, in the case of his corps or the part thereof in which he is serving being ordered on service beyond the seas, he is either unfit for such service by reason of his health, or is within two years from the end either of the period of his army service in the term of his original enlistment, or of such re-engagement as is in this Act mentioned.

(5.) Where a soldier of the regular forces in any branch of the service, who was enlisted to serve part of the term of his original enlistment in the reserve, and has not extended his army service for the whole of that time, is on service beyond the seas, and at the time of his corps or the part thereof in which he is serving being ordered to another station or to return home, has more than two years of his army service in the term of his original enlistment unexpired, he may be transferred by order of the competent military authority to any corps of the same branch which or a part of which is on service beyond the seas.

(6.) Where a soldier of the regular forces has been transferred to serve, either as a warrant officer not holding an honorary commission, or on the staff, or in any corps not being a corps of infantry, cavalry, artillery, or engineers, he may by order of the competent military authority, either during the term of his

original enlistment or during the period of his re-engagement, be removed from such service and transferred to any corps of the regular forces serving in the United Kingdom, or to any corps of the regular forces serving on the station beyond the seas on which he is serving at the time of his removal, or to the corps of the regular forces in which he was serving prior to such first-mentioned transfer, either in the rank he holds at the time of his removal or any lower rank.

(7.) Where a soldier of the regular forces—

(a.) Has been guilty of the offence of desertion from His Majesty's service or of fraudulent enlistment, and has either been convicted of the same by a court-martial, or, having confessed the offence, is liable to be tried, but his trial has been dispensed with by order of the competent military authority; or

(b.) Has been sentenced by a court-martial for any offence to a punishment not less than detention for a term of three months;

such soldier shall be liable, in commutation wholly or partly of other punishment, to general service, and may from time to time be transferred to such corps of the regular forces as the competent military authority may from time to time order.

(8.) A soldier of the regular forces delivered into military custody or committed by a court of summary jurisdiction in any part of His Majesty's dominions as a deserter shall be liable to be transferred by order of the competent military authority to any corps of the regular forces near to the place where he is delivered or committed, or to any other corps to which the competent military authority think it desirable to transfer him, and to serve in the corps to which he is transferred without prejudice to his subsequent trial and punishment.

NOTE.

1. *Appointed—transferred*, see notes 2 and 4 to s. 82.

2. Para. (1). The transfer during these three months does not require the consent of the soldier. During those three months he is entitled to his discharge under s. 81 on proper demand and payment.

3. Para. (8). *Vary the conditions of his service.* This is to provide for such a case as the transfer of a man from the Royal Horse and Royal Field Artillery to the cavalry. The period of service with the colours in the cavalry is longer than in the Royal Horse and Royal Field Artillery, and it would consequently be necessary to lengthen the army service of the man transferred.

4. Paras. (4) and (5). *Or the part thereof in which he is serving.* These words are inserted in consequence of "corps" including the whole of an infantry regiment, part of which will probably be serving in and the other part out of the United Kingdom.

5. Para. (6). "*Or in any corps not being a corps of infantry, cavalry, artillery, or engineers.*" For definition of "corps" see s. 190 (15) (A) (iii). See also Ch. XI, paras. 5-9.

6. *Transferred to serve.* This applies to a warrant officer promoted to that rank in any corps other than those mentioned in Subs. (5) or into any establishment which is not a "corps."

Part II. 7. Para. (7). *Is liable to be tried.* A soldier who, though having confessed an offence, is exempted by s. 161 from trial and punishment, is by virtue of these ss. 83-85. words relieved from liability to general service under this paragraph. The liability to general service is a commutation of punishment which may be allowed by the competent military authority, and is not a punishment which a court-martial can award. Consequently it is not within the powers of mitigation and commutation given to confirming and other officers by s. 57.

An order passed under this paragraph will be entered in the soldier's record of service; K.R., 597.

8. *Competent military authority.* As to the meaning of this expression, see s. 101 and R.P. 128.

9. See generally as to transfers, K.R., 323-334.

Re-engagement and Prolongation of Service.

Re-engagement of soldiers.

84. (1.) Subject to any general or special regulations from time to time made by the Army Council a soldier of the regular forces, if in army service, and after the expiration of nine years from the date of his original term of enlistment may, on the recommendation of his commanding officer, and with the approval of the competent military authority, be re-engaged for such further period of army service as will make up a total continuous period of twenty-one years of army service, reckoned from the date of his attestation, and inclusive of any period previously served in the reserve.

(2.) A soldier of the regular forces during his period of re-engagement shall be liable to forfeit his previous service during such period of re-engagement in like manner as he is liable under this Part of this Act during the term of his original enlistment.

(3.) A soldier of the regular forces who so re-engages shall make before his commanding officer a declaration in accordance with the said regulations.

NOTE.

1. Subs. (1). *Competent military authority.* As to the meaning of this expression see s. 101 and R.P. 128.

2. Subs. (2). The effect of this sub-section is that a soldier serving on a re-engagement, who is convicted by court-martial of desertion or fraudulent enlistment, or who, being liable to trial, has had his trial for either of these offences dispensed with by the competent military authority, forfeits all prior service rendered during the period of such re-engagement, i.e., from the day following that on which he completed twelve years' service. The Army Council may restore all or part of such forfeited service to a soldier where either the soldier performs good and faithful service, or a court-martial recommends it; see K.R., 273.

Continuance in service after twenty-one years' service.

85. A soldier of the regular forces who has completed, or will within one year complete, a total period of twenty-one years' service, inclusive of any period served in the reserve, may give notice to his commanding officer of his desire to continue in His Majesty's service in the regular forces; and if the competent military authority approve, he may be continued as a soldier of the regular

forces in the same manner in all respects as if his term of service were still unexpired, except that he may claim his discharge at the expiration of any period of three months after he has given notice to his commanding officer of his wish to be discharged. Part II.
ss. 85-87.

NOTES.

1. *Inclusive of any period served in the reserve.* This meets the case where a man has been transferred to the reserve, and after staying a time in the reserve has either been called out and re-engaged, or has been permitted to rejoin the colours and has re-engaged.

2. *Competent military authority.* As to the meaning of this expression see s. 101 and R.P. 128.

3. See K.R., 270-272, as to conditions, &c., of continuance in the service under this section.

86. The regulations from time to time made in pursuance of this Part of this Act may, if it seems expedient, provide that a non-commissioned officer of the regular forces who extends his army service for the residue unexpired of his original term of enlistment shall have the right at his option to re-engage under section eighty-four, and to continue his service under section eighty-five of this Act, or to do either of such things, subject nevertheless to the veto of the Army Council or other authority mentioned in the regulations, and to such other conditions as are specified in the regulations. Re-engagement and continuance of service of non-commissioned officers.

NOTES.

The object of this section is to enable regulations to be made by which a N.C.O., who agrees to extend his army service for the whole of his twelve years, may have the right to treat the army as his profession for life, and, if he makes himself efficient and conducts himself properly, to continue in the army until he has earned a pension. For the regulations under this part of the Act, see K.R., 264-272.

87. (1.) Where the time at which a soldier of the regular forces would otherwise be entitled to be discharged occurs while a state of war exists between His Majesty and any foreign power, or while such soldier is on service beyond the seas, or while soldiers in the reserve are required by a proclamation in pursuance of the enactments relating to the calling out of the reserve on permanent service to continue in or re-enter upon army service, the soldier may be detained, and his service may be prolonged for such further period, not exceeding twelve months, as the competent military authority may order; but at the expiration of that period, or any earlier period at which the competent military authority considers his services can be dispensed with, the soldier shall, as provided by this Act, be discharged with all convenient speed. Prolongation of service in certain cases.

(2.) Where the time at which a soldier of the regular forces would otherwise be entitled to be transferred to the reserve occurs while a state of war exists between His Majesty and any foreign Power, the soldier may be detained in army service for such

Part II. further period, not exceeding twelve months, as the competent military authority may order, but at the expiration of that period, or any earlier period at which the competent military authority consider his services can be dispensed with, the soldier shall, with all convenient speed, be sent to the United Kingdom for the purpose of being transferred to the reserve.

ss. 87-88.

(3.) If a soldier required under this section to be discharged or sent to the United Kingdom desires, while a state of war exists between His Majesty and any foreign Power, to continue in His Majesty's service, and the competent military authority approve, he may agree to continue as a soldier of the regular forces in the same manner in all respects as if his term of service were still unexpired, except that he may claim his discharge at the end of such state of war, or, if it is so provided by such agreement, at the expiration of any period of three months after he has given notice to his commanding officer of his wish to be discharged.

(4.) A soldier who so agrees to continue shall make before his commanding officer a declaration in accordance with any general or special regulations from time to time made by the Army Council.

NOTE.

1. *Competent military authority.* See s. 101, and R.P. 128.
2. *The reserve:* see definition in s. 101 (2).
3. Subs. (1). *Required by proclamation, &c.* See s. 88, and Reserve Forces Act, 1882, s. 12 (4).
4. Subs. (8). This enables a man who is entitled to be discharged or transferred to the reserve to volunteer for service during the war without re-engaging, or extending his service.

In imminent national danger His Majesty may continue soldiers in army service or call out for permanent service.

88. (1.) It shall be lawful for His Majesty in Council in case of imminent national danger or of great emergency, by proclamation, the occasion being first communicated to Parliament if Parliament be then sitting, or if Parliament be not then sitting, declared by the proclamation, to order that the soldiers who would otherwise be entitled in pursuance of the terms of their enlistment to be transferred to the reserve shall continue in army service.

(2.) It shall be lawful for His Majesty by any such proclamation to order the Army Council from time to time to give, and when given to revoke or vary, such directions as may seem necessary or proper for causing all or any of the soldiers mentioned in the proclamation to continue in army service.

(3.) Every soldier for the time being required by, or in pursuance of such directions to continue in army service shall continue to serve in army service for the same period for which he might be required to serve, if he had been transferred to the reserve, and called out for permanent service by a proclamation of His Majesty under the enactments relating to the reserve.

(4.) Any man who has entered the reserve in pursuance of the terms of his enlistment may be called out for permanent service by

a proclamation of His Majesty under the enactments relating to the calling out of the reserve on permanent service.

NOTE.

1. This section applies to all soldiers who have at any time been enlisted to serve part of their time in the reserve. The effect of the Reserve Forces Act, 1882, s. 14, is that all men in the reserve may be required to serve for a further period of twelve months in the circumstances in which a soldier may be detained in service under s. 87.

2. The proclamation calling out the reserve may be made under the Reserve Forces Act, 1882, in case of imminent national danger or of great emergency. A man in Section A of the army reserve may be called out for permanent service under the Reserve Forces and Militia Act, 1898, without any proclamation or previous communication to Parliament (see Ch. XI, paras. 26 and 35), and this is also the case as respects a man in Section A, Special Reserve (see T.R.F. Act, s. 32 and Ch. XI, para. 41).

Discharge and Transfer to Reserve Forces.

89. In the following cases ; that is to say :—

- (1.) Where a soldier of the regular forces has been invalided from service beyond the seas ; or
- (2.) Where a corps to which a soldier of the regular forces belongs, or the part thereof in which he is serving, is ordered on service beyond the seas and the soldier is either unfit for such service by reason of his health, or is within two years of the end of the period of his army service in the term of his original enlistment,

Transfer
soldier to
reserve
when corps
ordered
abroad.

the competent military authority may by order transfer him to the reserve in like manner as if the period of his actual service were specified in his attestation paper as the portion of the term of his original enlistment which was to be spent in army service.

NOTE.

Competent military authority. See s. 101 and Rule 128.

90. (1.) Save as otherwise provided by this Act or the Acts relating to the reserve forces, every soldier of the regular forces upon the completion of the term of his original enlistment, or of the period of his re-engagement, shall be discharged with all convenient speed, but until so discharged shall be subject to this Act as a soldier of the regular forces.

Discharge
or transfer
to reserve,

(2.) Where a soldier of the regular forces enlisted in the United Kingdom is, when entitled to be discharged, serving beyond the seas, he shall, if he so requires, be sent to the United Kingdom, and in such case shall, with all convenient speed, be sent there free of expense, and on his arrival be discharged. If such soldier is permitted, at his request, to stay at the place where he is serving, he shall not afterwards have any claim to be sent at the public expense to the United Kingdom or elsewhere.

(3.) Every soldier of the regular forces upon the completion of the period of his army service, if shorter than the term of his

Part II. original enlistment, shall be transferred to the reserve, but until
 ss. 90-91. so transferred shall be subject to this Act as a soldier of the regular forces.

(4.) Where a soldier of the regular forces, when entitled to be transferred to the reserve, is serving beyond the seas, he shall be sent to the United Kingdom free of expense with all convenient speed, and on his arrival shall be transferred to the reserve.

(5.) A soldier of the regular forces who is discharged on the completion of the term of his original enlistment or his re-engagement, as mentioned in the second sub-section of this section, or is transferred to the reserve, shall be entitled to be conveyed free of cost from the place in the United Kingdom where he is discharged or transferred to the place in which he appears from his attestation paper to have been attested, or to any place at which he may at the time of his discharge or transfer decide to take up his residence, and to which he can be conveyed without greater cost: Provided that in the case of transfer to the reserve he shall not be entitled to be so conveyed to any place out of the United Kingdom.

NOTE.

1. Subs. (1). *Save as otherwise provided.* e.g., s. 87 provides for the temporary prolongation of service of a man entitled to discharge, and s. 158 gives power to detain for trial a man charged with an offence under this Act, though entitled to his discharge or transfer to the reserve.

As to time of discharge, see s. 92; and as to postponement of transfer to the reserve, see s. 87.

2. Subs. (4). As to power to allow a reservist to reside out of the United Kingdom, see the Reserve Forces Acts, 1899 and 1906, pp. 751, 752, and Army Reserve Regulations, para. 74 *et seq.*

Delivery of
lunatic
soldier on
discharge
with his
wife or
child at
workhouse,
or of dan-
gerous
lunatic at
asylum.

91. (1.) The Army Council, or any officer deputed by them for the purpose, may, if they or he think proper, on account of a soldier's lunacy, cause any soldier of the regular forces on his discharge, and his wife and child, or any of them, to be sent to the parish or union to which under the statutes for the time being in force he appears, from the statements made in his attestation paper and other available information, to be chargeable; and such soldier, wife, or child, if delivered after reasonable notice, in England or Ireland at the workhouse in which persons settled in such parish or union are received, and in Scotland to the inspector of poor of such parish, shall be received by the master or other proper officer of such workhouse or such inspector of poor, as the case may be:

(2.) Provided that the Army Council or any officer deputed by them for the purpose, where it appears to them or him that any such soldier is a dangerous lunatic, and is in such a state of health as not to be liable to suffer bodily or mental injury by his removal, may, by order signified under their hand, send such lunatic direct to an asylum, registered hospital, licensed house or other place in which pauper lunatics can legally be confined and for the purpose

of the said order the above-mentioned parish or union shall be deemed to be the parish or union from which such lunatic is sent. Part II.
ss. 91-2.

(3.) In England the lunatic shall be sent to the asylum, hospital, house, or place to which a person in the workhouse aforesaid, on becoming a dangerous lunatic, can by law be removed; and an order of the Army Council or officer under this section shall be of the same effect as a summary reception order within the meaning of the Lunacy Act, 1890, and the like proceedings shall be taken thereon as on an order under that Act.

(4.) The Army Council or officer, before making the said order in respect of a lunatic who is liable to be delivered to the inspector of poor of a parish in Scotland, may require the inspector of poor of that parish to specify the asylum to which such lunatic if in the parish would be sent, and it shall be the duty of such inspector forthwith to specify such asylum, and thereupon the Army Council or officer may make the said order for sending the lunatic to that asylum; and such order shall be of the same effect as an order by the sheriff within the meaning of section fifteen of the Lunacy (Scotland) Act, 1862, and the like proceedings shall be taken thereon as on an order under that section.

(5.) In the case of any such lunatic who is liable to be delivered at a workhouse in Ireland at which persons settled in the said union are received, the Army Council, or any officer deputed by them for the purpose, may, by order under their or his hand, send such lunatic to the asylum of the district in which such union is situate; and such order shall be of the same effect as a warrant under the hands and seals of two justices given under the provisions of the tenth section of the Lunacy (Ireland) Act, 1867.

NOTE.

1. See further as to lunatic soldiers, K.R., 408-410.

2. Suba. (3). *To the asylum . . . to which, &c. . . i.e., the county or borough asylum.*

92. (1.) A soldier of the regular forces shall not be discharged from those forces, unless by sentence of court-martial with ignominy or by order of the competent military authority, or by authority direct from His Majesty, and until duly discharged in manner provided by this Act and by regulations of the Army Council under this Act shall be subject to this Act. Regulations
as to dis-
charge of
soldiers.

(2.) To every soldier of the regular forces who is discharged, for whatever reason he is discharged, there shall be given a certificate of discharge, stating such particulars as may be from time to time required by regulations of the Army Council under this Act.

(3.) Notwithstanding anything in Part III of the Territorial and Reserve Forces Act, 1907, a man who has been discharged from the Regular Forces may, if it is so prescribed by regulations under the Reserve Forces Act, 1882, and subject to the conditions (if any) so prescribed, enlist into the Army Reserve as a special reservist.

Part II.

NOTE.

- ss. 92-94. 1. Subs. (1). The terms of the attestation of a soldier bind him to serve so long as his services are required. Consequently the Crown has always a right to discharge him if his services are not required; see Ch. X, para. 29. When a soldier is discharged he receives a certificate of discharge and a certificate of character; but in certain cases special certificates of discharge are issued in lieu of the ordinary certificates. (K.R. 415.)
2. A soldier's discharge is regarded as taking effect from the date of the confirmation of his discharge and not from the date of the delivery of the certificate of discharge to him.
3. Until a soldier's discharge is confirmed, he remains subject to military law, but any undue delay in carrying out the discharge would give good ground for complaint on the part of a soldier.
4. The conditions which must be fulfilled before a discharge is valid and complete, are those laid down in this sub-section and in K.R. 377 to 414.
5. Sub-section (2). This sub-section and K.R. 415 to 423, give a statutory right to a soldier who has been duly discharged in accordance with subs. (1) to demand a certificate of discharge; the delivery of the certificate is not a necessary condition of discharge, but rather a necessary consequence of it.
6. The certificates of discharge and character are signed by the prescribed authority, and delivered to the man on his last day of service. See Ch. X, para. 30, K.R., 415-423.
7. *Competent military authority.* See s. 101 and Rule 128.

Authorities to enlist and attest Recruits.

Regulations
as to
persons to
enlist, and
enlistment
of soldiers.

93. The Army Council may from time to time make and when made revoke and alter, a general or special order, making such regulations, giving such directions, and issuing such forms as they may think necessary or expedient, respecting the persons authorised to enlist recruits for His Majesty's regular forces, and for the purpose of such enlistment, and generally for carrying this part of this Act into effect; and any such order shall be of the same effect as if enacted in this Act.

NOTE.

See K.R., 261, and the Recruiting Regulations.

Justices of
the peace
for the
purposes of
enlistment.

94. For the purposes of the attestation of soldiers in pursuance of this part of this Act:—

An officer in the United Kingdom or elsewhere, if authorised in that behalf under the regulations of the Army Council, also every person exercising the office of a magistrate in India or a colony, and also each of the following persons, shall have the authority of a justice of the peace and be deemed to be included in the expression "justice of the peace" wherever used in this part of this Act in relation to the attestation of soldiers; that is to say:—

In India, any person duly authorised in that behalf by the Governor-General; and in the territories of any native state in India, the person performing the duties of the office of British resident or political agent

therein, or any other person authorised in that behalf by the Governor-General of India ; and
 In a colony, any person duly authorised in that behalf by the governor of the colony ; and
 Beyond the limits of the United Kingdom, India, and a colony, any British consul-general, consul, or vice-consul, or person duly exercising the authority of a British consul.

Part II
 ss. 94-5

NOTE.

1. It must be recollected that a justice of the peace can, in most cases, only act when within the county or borough for which he is justice.
2. The persons named in this section will have authority to attest, but not to enlist or re-engage soldiers, so that consuls, who were formerly authorised by the Mutiny Act to enlist soldiers, no longer have that power, unless expressly authorised by order of the Army Council under the last section.
3. The officers authorised to attest recruits are specified in the Recruiting Regulations, para. 109.
4. In Ireland a man is not to be taken for attestation before a magistrate appointed under the Towns Improvement Act, and in Scotland not before a magistrate who is not a justice of the peace.
5. For definitions of India and colony, see s. 190 (21) (23).

Special provisions as to Persons to be Enlisted.

95. (1.) Any person who is for the time being an alien may, if His Majesty think fit to signify his consent through a Secretary of State, be enlisted in His Majesty's regular forces, so, however, that the number of aliens serving together at any one time in any corps of the regular forces shall not exceed the proportion of one alien to every fifty British subjects, and that an alien so enlisted shall not be capable of holding any higher rank in His Majesty's regular forces than that of a warrant officer or non-commissioned officer.

Enlistment
 of aliens,
 negroes, &c.

(2.) Provided that, notwithstanding the above provisions of this section, any inhabitant of any British protectorate and any negro or person of colour, although an alien, may voluntarily enlist in pursuance of this Part of this Act, and when so enlisted, shall, while serving in His Majesty's regular forces, be deemed to be entitled to all the privileges of a natural-born British subject.

NOTE.

1. See Ch. X, paras. 27 and 28.
2. This section relates only to aliens enlisted under it, and prohibits their promotion to commissioned rank.
3. Sec. 3 of the Act of Settlement forbids an alien to enjoy any office or place of trust, but does not prevent honorary rank in the British Army being conferred upon an alien, whether or not such honorary rank is accompanied by a formal commission. Such a distinction is a mere matter of honour and dignity, and does not fall within the Act so long as the possessor does not by virtue of his rank or commission exercise any actual command or power.

Part II. 96. The master of an apprentice in the United Kingdom who has been attested as a soldier of the regular forces may claim him while under the age of twenty-one years as follows, and not otherwise :—

ss. 96-97.
Claims of
masters to
apprentices.

- (1.) The master, within one month after the apprentice left his service, must take before a justice of the peace the oath in that behalf specified in the First Schedule to this Act, and obtain from the justice a certificate of having taken such oath, which certificate the justice shall give in the form in the said schedule, or to the like effect :
- (2.) A court of summary jurisdiction within whose jurisdiction the apprentice may be, if satisfied on complaint by the master that he is entitled to have the apprentice delivered up to him, may order the officer under whose command the apprentice is to deliver him to the master, but if satisfied that the apprentice stated on his attestation that he was not an apprentice may, and if required by or on behalf of the said commanding officer shall, try the apprentice for the offence of making such false statement, and if need be may adjourn the case for the purpose :
- (3.) Except in pursuance of an order of a court of summary jurisdiction, an apprentice shall not be taken from His Majesty's service :
- (4.) An apprentice shall not be claimed in pursuance of this section unless he was bound for at least four years by a regular indenture, and was under the age of sixteen years when so bound :
- (5.) A master who gives up the indenture of his apprentice within one month after the attestation of such apprentice shall be entitled to receive to his own use so much of the bounty (if any) payable to such apprentice on enlistment as has not been paid to the apprentice before notice was given of his being an apprentice.

NOTE.

Court of summary jurisdiction. See ss. 166-169 and 190 (34)-(36).

Application
of ap-
prentice
provisions
to in-
dentured
labourers.

97. The provisions of this part of this Act with respect to apprentices shall apply to a person who at the time of his attestation is an indentured labourer in a colony, with these qualifications, that such indentured labourer, if imported at the expense of the employer or of the colony in consideration of the indenture under which he is serving, may be claimed although above the age of twenty-one years, and though bound for a less period or at an older age than is above specified.

NOTE.

For definition of colony, see s. 190 (28).

ss.
97-99.

Offences as to Enlistment.

98. If a person without due authority—

Penalty on
unlawful
recruiting

- (1.) Publishes or causes to be published notices or advertisements for the purpose of procuring recruits for His Majesty's regular forces, or in relation to recruits for such forces; or
- (2.) Opens or keeps any house, place of rendezvous, or office as connected with the recruiting of such forces; or
- (3.) Receives any person under any such advertisement as aforesaid; or
- (4.) Directly or indirectly interferes with the recruiting service of such forces;

he shall be liable on summary conviction to a fine not exceeding twenty pounds.

NOTE.

On summary conviction, i.e., on conviction before a court of summary jurisdiction in the manner provided by the Summary Jurisdiction Acts. See s. 190 (34) and (35) and ss. 166 to 169.

99. (1.) If a person knowingly makes a false answer to any question contained in the attestation paper, which has been put to him by or by direction of the justice before whom he appears for the purpose of being attested, he shall be liable on summary conviction to be imprisoned with or without hard labour for any period not exceeding three months.

Recruits
punishable
for false
answers.

(2.) If a person guilty of an offence under this section has been attested as a soldier of the regular forces, he shall be liable, at the discretion of the competent military authority, to be proceeded against before a court of summary jurisdiction, or to be tried by court-martial for the offence.

NOTE.

1. On summary conviction. See note to s. 98.

2. Subs. (2). The offender may be tried and punished in any place where he may for the time being happen to be (s. 159, as to courts-martial, and s. 166 as to civil courts of summary jurisdiction), as well as in the place where the offence was committed, that is to say, where he made the false answer.

3. A court of summary jurisdiction cannot entertain a charge of false answer on attestation, when the answer was made more than six months before the time when proceedings are commenced. See Summary Jurisdiction Act, 1848, s. 11.

5. Competent military authority. See s. 101, and R.P. 128.

6. Under 6 Edw. 7, c. 5, s. 2, a person who uses, or gives for use, on enlistment a false statement as to character or previous employment is liable on summary conviction to a fine not exceeding twenty pounds.

Part II.

ss.

100-101.
Validity of
attestation
and enlist-
ment or
re-engage-
ment.

Miscellaneous as to Enlistment.

100. (1.) Where a person after his attestation on his enlistment, or the making of his declaration on re-engagement, has received pay as a soldier of the regular forces during three months, he shall be deemed to have been duly attested and enlisted or duly re-engaged, as the case may be, and shall not be entitled to claim his discharge on the ground of any error or illegality in his enlistment, attestation, or re-engagement, or on any other ground whatsoever, save as authorised by this Act; and, if within the said three months such person claims his discharge, any such error or illegality or other ground shall not until such person is discharged in pursuance of his claim affect his position as a soldier in His Majesty's service, or invalidate any proceedings, act, or thing taken or done prior to such discharge.

(2.) Where a person is in pay as a soldier in any corps of His Majesty's regular forces, such person shall be deemed for all the purposes of this Act to be a soldier of the regular forces, with this qualification, that he may at any time claim his discharge, but until he so claims and is discharged in pursuance of that claim he shall be subject to this Act as a soldier of the regular forces legally enlisted and duly attested under this Act.

(3.) Where a person claims his discharge on the ground that he has not been attested or re-engaged or not duly attested or re-engaged, his commanding officer shall forthwith forward such claim to the competent military authority, who shall as soon as practicable submit it to the Army Council and if the claim appears well grounded the claimant shall be discharged with all convenient speed.

NOTE.

1. Subs. (2). This meets the case of a man who has been receiving pay without ever having been legally attested or re-engaged. Such a case should but seldom arise under the present law and practice of enlistment, but if it should (as e.g., if an alien has by making a false answer been enlisted without due authority), the above enactment will effectually prevent a man who has actually served from suddenly repudiating his liability to the rules of the service, and thus evading punishment when charged with or sentenced for an offence.

2. *Competent military authority.* See s. 101, and R.P. 128.

Definition
for purposes
of Part II of
competent
military
authority
and reserve.

101. (1.) Any act or thing authorised or required by this Part of this Act to be done by, to, or before the competent military authority may be done by, to, or before the Army Council or any officer prescribed in that behalf.

(2.) For the purposes of this Part of this Act the expression "reserve" means the first class of the army reserve force.

NOTE.

1. *Prescribed.* See R.P. 128.

2. *Army reserve force, i.e.,* the army reserve under the Reserve Forces Act, 1882 (45 and 46 Vict., c. 48), s. 28: see Oh. XI, para. 22 *et seq.*

PART III.

BILLETING AND IMPRESSMENT OF CARRIAGES.

This part relates only to the United Kingdom.

Billeting of Officers and Soldiers.

102. During the continuance in force of this Act, so much of any law as prohibits, restricts, or regulates the quartering or billeting of officers and soldiers on any inhabitant of this realm without his consent is hereby suspended, so far as such quartering or billeting is authorised by this Act.

Suspension
of 3 Chas. 1,
c. 1;
31 Chas. 2,
c. 1;
6 Anne (1.),
c. 14, as to
billeting.

NOTE.

The Acts suspended by this section are those referred to in the marginal note to this section. See as to billeting generally, Ch. IX, para. 115 *et seq.*

103. (1.) Every constable for the time being in charge at any place in the United Kingdom mentioned in the route issued to the commanding officer of any portion of His Majesty's regular forces shall, on the demand of such commanding officer, or of an officer or soldier authorised by him, and on production of such route, billet on the occupiers of victualling houses and other premises specified in this Act as victualling houses in that place such number of officers, soldiers, and horses entitled under this Act to be billeted as are mentioned in the route and stated to require quarters.

Obligation
of constable
to provide
billets for
officers,
soldiers,
and horses.

(2.) A route for the purposes of this part of this Act shall be issued under the authority of His Majesty, signified through a Secretary of State, and shall state the forces to be moved in pursuance of the route, and that statement shall be signed by such officer as the Army Council may from time to time order in that behalf.

(3.) A route purporting to be issued and signed as required by this section shall be evidence until the contrary is proved of its having been duly issued and signed in pursuance of this Act, and if delivered to an officer or soldier by his commanding officer shall be a sufficient authority to such officer or soldier to demand billets, and when produced by an officer or soldier to a constable shall be conclusive evidence to such constable of the authority of the officer or soldier producing the same to demand billets in accordance with such route.

NOTE.

1. See as to billeting generally, Ch. IX, para. 115 *et seq.*
2. Subs. (1). *Constable.* See ss. 120 and 190 (38).

Part III. 3. Subs. (3). This sub-section provides that a route shall, so to speak, prove itself, i.e., that it is not to be questioned except on evidence produced to show that it has not been duly issued or signed.

ss.
104-105.

4. The necessary modifications in the application of this section to the Territorial Force are provided in s. 181 (4); and as regards the application of the provisions of this Act as to billeting on the embodiment of all or any part of the Territorial Force, see s. 108A, added by A.A.A., 1909.

**Liability to
provide
billets.**

104. (1.) The provisions of this part of this Act with respect to victualling houses shall extend to all inns, hotels, livery stables, or alehouses, also to the houses of sellers of wine by retail, whether British or foreign, to be drunk in their own houses or places thereunto belonging, and to all houses of persons selling brandy, spirits, strong waters, cider, or metheglin by retail; and the occupier of a victualling house, inn, hotel, livery stable, alehouse, or any such house as aforesaid shall be subject to billets under this Act, and is in this Act included under the expression "keeper of a victualling house," and the inn, hotel, house, stables, and premises of such occupier are in this Act included under the expression "victualling house."

(2.) Provided that an officer or soldier shall not be billeted—

(a.) In any private house; nor

(b.) In any canteen held or occupied under the authority of a Secretary of State; nor

(c.) On persons who keep taverns only, being vintners of the City of London admitted to their freedom of the said company in right of patrimony or apprenticeship, notwithstanding the persons who keep such taverns have taken out licences for the sale of any intoxicating liquor; nor

(d.) In the house of any distiller kept for distilling brandy and strong waters, so as such distiller does not permit tippling in such house; nor

(e.) In the house of any shopkeeper whose principal dealing is more in other goods and merchandise than in brandy and strong waters, so as such shopkeeper does not permit tippling in such house; nor

(f.) In a house of a person licensed only to sell beer or cider not to be consumed on the premises; nor

(g.) In the house of residence of any foreign consul duly accredited as such.

**Officers,
soldiers,
and horses
entitled to
be billeted.**

105. (1.) All officers and soldiers of His Majesty's regular forces; and

(2.) All horses belonging to His Majesty's regular forces; and

(3.) All horses belonging to the officers of such forces for which forage is for the time being allowed by His Majesty's regulations,

shall be entitled to be billeted.

106. (1.) The keeper of a victualling house upon whom any Part III. officer, soldier, or horse is billeted shall receive such officer, soldier, or horse in his victualling house and furnish there the accom- ss. 106-107. modation following: that is to say, lodging and attendance for the officer; and lodging, attendance, and food for the soldier; and stable room and forage for the horse, in accordance with the provisions of the Second Schedule to this Act. Accommodation and payment on billet.

(2.) Where the keeper of a victualling house on whom any officer, soldier, or horse is billeted desires, by reason of his want of accommodation or of his victualling house being full or otherwise, to be relieved from the liability to receive such officer, soldier, or horse in his victualling house, and provides for such officer, soldier, or horse in the immediate neighbourhood such good and sufficient accommodation as he is required by this Act to provide, and as is approved by the constable issuing the billets, he shall be relieved from providing the same in his victualling house.

(3.) There shall be paid to the keeper of a victualling house for the accommodation furnished by him in pursuance of this Act the prices for the time being authorised in this behalf by Parliament.

(4.) An officer or soldier demanding billets in pursuance of this Act shall, before he departs, and if he remains longer than four days, at least once in every four days, pay the just demands of every keeper of a victualling house on whom he and any officers and soldiers under his command, and his or their horses (if any), have been billeted.

(5.) If by reason of a sudden order to march, or otherwise, an officer or soldier is not able to make such payment to any keeper of a victualling house as is above required, he shall before he departs make up with such keeper of a victualling house an account of the amount due to him, and sign the same, and forthwith transmit the account so signed to the Army Council who shall forthwith cause the amount named in such account as due to be paid.

NOTE.

1. Subs. (1). The details respecting the food and forage to be furnished are contained in the second schedule: the prices to be paid are contained in the Army (Annual) Act for each year.

2. Subs. (2). This sub-section shows clearly the obligation of the innkeeper to provide elsewhere accommodation for a soldier or horse billeted on him if he has not got it on his own premises, or if by reason of his house being full or otherwise, he desires to be rid of the liability. The constable is made judge of the sufficiency of the substituted accommodation.

107. (1.) The police authority for any place may cause annually a list to be made out of all keepers of victualling houses within the meaning of this Act in such place, or any particular part thereof, liable to billets under this Act, specifying the situation and character of each victualling house, and the number of soldiers and horse who may be billeted on the keeper thereof. Annual list of keepers of victualling houses liable to billets.

Part III (2.) The police authority shall cause such list to be kept at some
ss. 1078 convenient place open for inspection at all reasonable times by persons interested, and any person who feels aggrieved either by being entered in such list, or by being entered to receive an undue proportion of officers, soldiers, or horses, may complain to a court of summary jurisdiction, and the court, after such notice as the court think necessary to persons interested, may order the list to be amended in such manner as the court may think just.

NOTE.

1. Subs. (1). *Police authority.* See definition in s. 190 (39). See also s. 120.

2. The list merely determines the proportion in which the billets are to be distributed among the keepers of victualling houses, and does not relieve them from their liability to find accommodation for any number for whom quarters are required. *Sharratt v. Scotney*, L.R. [1892] 2 Q.B. 479.

**Regulations
as to grant
of billets.**

108. The following regulations shall be observed with respect to billeting in pursuance of this Act ; that is to say :—

- (1.) No more billets shall at any time be ordered than there are effective officers, soldiers, and horses present to be billeted :
- (2.) All billets, when made out by the constable, shall be delivered into the hands of the commanding officer or non-commissioned officer who demanded the billets, or of some officer authorised by such commanding officer :
- (3.) If a keeper of a victualling house feels aggrieved by having an undue proportion of officers, soldiers, or horses billeted on him, he may apply to a justice of the peace, or if the billets have been made out by a justice may complain to a court of summary jurisdiction, and the justice or court may order such of the officers, soldiers, or horses to be removed and to be billeted elsewhere as may seem just :
- (4.) A constable having authority in a place mentioned in the route may act for the purposes of billeting in any locality within one mile from such place, unless some constable ordinarily having authority in such locality is present and undertakes to billet therein the due proportion of officers, soldiers, and horses :
- (5.) The regulations with respect to billets contained in the Second Schedule to this Act shall be duly observed by the constable :
- (6.) A justice of the peace, on the request of an officer or non-commissioned officer authorised to demand billets, may vary a route by adding any place or omitting any place, and also may direct billets to be given above one mile from a place mentioned in the route :
- (7.) A justice of the peace may require a constable to give an account in writing of the number of officers, soldiers, and

horses billeted by such constable, together with the names Part III.
of the keepers of victualling houses on whom such officers,
soldiers, and horses are billeted, and the locality of such ^{ss} 108-108A.
victualling houses.

NOTE.

Para. (3). *Court of summary jurisdiction.* See definition in s. 190 (35).

108A.—(1.) Where directions have been given for embodying all ^{Billeting in cases of emergency.}
or any part of the Territorial Force, His Majesty by Order
distinctly stating that a case of emergency exists, and signified by
a Secretary of State, and also in Ireland the Lord Lieutenant by a
like Order, signified by the Chief Secretary or Under-Secretary,
may authorise any general or field officer commanding any
part of His Majesty's forces in any military district or place in
the United Kingdom to issue a billeting requisition under this
section.

(2.) Any officer so authorised may issue a billeting requisition
under his hand reciting the said Order and requiring chief officers
of police to provide billets in such places and for such number of
officers and soldiers, and their horses, and for such period, as may
be specified in the requisition.

(3.) The provisions of this Act as to billeting shall apply to
billeting under such a requisition as if for references therein to a
route there were substituted references to such a requisition,
subject, however, to the following modifications :—

(a.) The occupiers of all public buildings, dwelling-houses, ware-
houses, barns, and stables shall, as well as the keepers of
victualling houses, be liable to billets, and the said
provisions shall apply as if references to victualling houses
and the keepers of victualling houses included references
to such public buildings, dwelling-houses, warehouses,
barns, and stables, and the occupiers thereof :

(b.) The powers and duties conferred or imposed on constables
shall be exercised and performed by the chief officers of
police, and accordingly for references to constables in the
said provisions there shall be substituted references to the
chief officers of police, and for the reference to a justice of
the peace in sub-section (7) of section one hundred and
eight there shall be substituted a reference to a court of
summary jurisdiction, but a chief officer of police, in
selecting the persons required to provide billets, and in
determining the number of officers and soldiers to be
billeted on any person, shall, so far as practicable, have
regard to the convenience of the several occupiers, and
shall act in accordance with any general instructions which
may have been issued by the police authority :

(c.) The prices to be paid to an occupier other than the keeper of
a victualling house for accommodation furnished and food

Part III.
s. 108A.

and fodder supplied by him shall be such as may be fixed by regulations made by the Army Council with the consent of the Treasury :

- (d.) Sub-section (2) of section one hundred and three (which defines a route), paragraph (6) of section one hundred and eight (which relates to the power of a justice to vary a route), and paragraph (2) of Part II of the Second Schedule to the Army Act (which requires billets to be made out to the less distant victualling houses) shall not apply.

(4.) Any regulations as to prices so made shall be laid before each House of Parliament as soon as may be after they are made, and, if within forty days after they have been so laid either House presents an address to His Majesty praying that any such regulations may be annulled, His Majesty may thereupon by Order in Council annul the same, and the regulations so annulled shall thenceforth become void without prejudice to anything done thereunder in the meantime.

- (5.) For the purposes of this section—

The expression "public building" includes any building wholly or partially provided or maintained out of the rates, and any building to which the public habitually have access, whether on payment or otherwise ;

The expression "chief officer of police"

- (a.) As respects the city of London, means the Commissioner of City Police, and elsewhere in England has the same meaning as in the Police Act, 1890 ;
- (b.) In Scotland has the same meaning as in the Police (Scotland) Act, 1890 ;
- (c.) As respects the police district of Dublin metropolis, means the Chief Commissioner of Police for that district, and elsewhere means a county inspector of the Royal Irish Constabulary.

In the case of unoccupied premises this section shall apply as if the owner were the occupier thereof.

(6.) Compensation shall be paid by the Army Council out of money voted by Parliament for Army services in respect of any damage caused by any officer or soldier billeted under this section to the premises in which he is billeted, and the amount of such compensation shall in the event of disagreement be determined—

- (a.) In England by arbitration under the Arbitration Act, 1889 ;
- (b.) In Scotland in the same manner as a question of disputed compensation under sub-section (10) of section twenty-five of the Local Government (Scotland) Act, 1894 ;

- (c.) In Ireland by arbitration under the Common Law Procedure Part III. Amendment Act (Ireland), 1856, as amended by any subsequent enactment.

ss.
108A-110.

NOTE.

1. This section was added by A.A.A., 1909, and extends the power of billeting in cases of emergency. When the Territorial Force is embodied, men, &c., belonging to that force or to the regulars may be billeted not only in the places mentioned in s. 104 (1), but also in public buildings, dwelling-houses, warehouses, barns and stables.

2. The duty of selecting the houses in which the men, &c., are to be billeted is to be performed by the chief officer of the police, who, however, is required to act under the instructions of the police authority, that is to say, in England (elsewhere than in the metropolitan police district) the standing joint committees in counties, and the watch committee in boroughs having a separate police force (see also Ch. IX, para. 127 A).

3. By an amendment made in A.A.A., 1918, the officers authorized to issue billeting requisitions will include divisional brigade and battalion commanders of the Territorial Force.

Offences in relation to Billeting.

109. If a constable commits any of the offences following; that is to say, Offences by constables.

- (1.) Billets any officer, soldier, or horse on any person not liable to billets without the consent of such person; or
- (2.) Receives, demands, or agrees for any money or reward whatsoever to excuse or relieve a person from being entered in a list as liable or from his liability to billets, or from any part of such liability; or
- (3.) Billets or quarters on any person or premises, without the consent of such person or the occupier of such premises, any person or horse not entitled to be billeted; or
- (4.) Neglects or refuses after sufficient notice is given to give billets demanded for any officer, soldier, or horse entitled to be billeted;

he shall, on summary conviction, be liable to a fine of not less than forty shillings, and not exceeding ten pounds.

NOTE.

On summary conviction. See note to s. 98.

110. If a keeper of a victualling house commits any of the offences following; that is to say, Offences by keepers of victualling houses.

- (1.) Refuses or neglects to receive any officer, soldier, or horse billeted upon him in pursuance of this Act, or to furnish such accommodation as is required by this Act; or
- (2.) Gives or agrees to give any money or reward to a constable to excuse or relieve him from being entered in a list as liable or from his liability to billets, or any part of such liability; or

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Part III. (3.) Gives or agrees to give to any officer or soldier billeted upon him in pursuance of this Act any money or reward in lieu of receiving an officer, soldier, or horse, or furnishing the said accommodation ;

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he shall, on summary conviction, be liable to a fine of not less than forty shillings and not exceeding five pounds.

NOTE.

On summary conviction. See note to s. 98.

Offences by
officers or
soldiers.

111. (1.) If any officer quarters or causes to be billeted any officer, soldier, or horse otherwise than is allowed by this Act upon any person, he shall be guilty of a misdemeanor.

(2.) If any officer or soldier commits any offence in relation to billeting for which he is liable to be punished under Part One of this Act, other than an offence in respect of which any other remedy is given by this Part of this Act to the person aggrieved he shall, upon summary conviction, be liable to a fine not exceeding fifty pounds.

(3.) A certificate of a conviction for an offence under this section shall be transmitted by the court making such conviction to the Army Council.

NOTE.

This section punishes with a fine on summary conviction all the offences in relation to billeting which have been made military offences by s. 80, except those for which the injured person can obtain compensation through a court of summary jurisdiction under s. 119.

Impressment of Carriages.

Supply of
carriages,
&c., for
regimental
baggage and
stores on
the march.

112. (1.) Every justice of the peace in the United Kingdom having jurisdiction in any place mentioned in a route issued to the commanding officer of any portion of His Majesty's regular forces shall, on the demand of such commanding officer, or of an officer or non-commissioned officer authorised by him, and on production of such route, issue his warrant requiring some constable or constables having authority in such place to provide, within a reasonable time to be named in the warrant, such carriages, animals, and drivers as are stated to be required for the purpose of moving the regimental baggage and regimental stores of the forces mentioned in the route in accordance with the route; and the constable or constables shall execute such warrant, and persons having carriages and animals suitable for the said purpose shall, when ordered by a constable in pursuance of such warrant, furnish the same in a state fit for use for the aforesaid purpose.

(2.) The route for the purpose of this section shall be such route as is mentioned in the foregoing provisions of this Part of this Act with respect to billeting.

(3.) A route purporting to be issued and signed as required by those provisions, if delivered to an officer or non-commissioned

officer by his commanding officer, shall be a sufficient authority to Part III.
such officer or non-commissioned officer to demand carriages and
animals in pursuance of this Act, and when produced by an officer
or non-commissioned officer shall be conclusive evidence to a justice
and constable of the authority of the officer or non-commissioned
officer producing the same to demand carriages and animals in
accordance with such route.

ss.
112-113.

(4.) The warrant ordering carriages, animals, and drivers to be provided shall specify the number and description of the carriages, and also the places from and to which the same are to travel, and the distances between such places.

(5.) When sufficient carriages or animals cannot be procured within the jurisdiction of the said justice, any justice having jurisdiction in the next adjoining place shall, by a like course of proceeding, supply the deficiency.

(6.) A fee of one shilling and no more shall be paid for the warrant by the officer or non-commissioned officer applying for the same, and shall be paid to the clerk of the justice.

NOTE.

1. See, generally, as to impressment of carriages, Ch. IX, paras. 129 foll.

As to the application of this section to the Territorial Force, see s. 181 (3) and (4).

2. Subs. (1). The same route is in practice used to obtain both billets and carriages.

For the purpose of moving the regimental baggage and stores. Except in cases of emergency, which are provided for by s. 115, carriages, &c. can only be impressed for this purpose, and use of them for any other purpose is penal (s. 31 (5)). The term "carriage" has not in this Act the popular meaning of a conveyance for persons only, but means a waggon, cart, or vehicle suitable for carrying baggage.

3. Persons who are required to furnish carriages and horses for the purpose of moving regimental baggage and stores can be required to furnish also the harness ordinarily used with them.

4. For definition of "regimental" see s. 190 (17).

113. (1.) There shall be paid in respect of the carriages and animals furnished in pursuance of this Part of this Act the rates specified in the Third Schedule to this Act and the regulations contained in that schedule with respect to the carriages and animals furnished shall be duly observed.

Payment for and regulations as to carriages, animals, &c.

(2.) The following authorities; that is to say,

(a.) In England, the court of general or quarter sessions of a county or of a borough subject to the Municipal Corporations Act, 1882; and

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Vict. c. 50.

(b.) In Scotland, the commissioners of supply of a county or the magistrates of a Royal or Parliamentary burgh; and

(c.) In Ireland, the grand jury for a county, a county of a city, a county of a town and city, or a city or town

Part III.

ss.

118-114.

and county, also any council of any such county, town, or city having by law the fiscal powers of a grand jury,

may from time to time, as respects places within their jurisdiction, by order increase the rates authorised in the said schedule by such amount in respect of each rate, not exceeding one third, as may seem reasonable, and the amount of such increase shall be notified in writing by the justice granting a warrant in pursuance of this Act to the person demanding the warrant.

(3.) The order shall specify the average price of hay and oats at the nearest market town at the time of fixing such increased rates, and the order shall not be in force for more than ten days beyond the next meeting of such authority, but may be renewed from time to time by a fresh order or orders, and while in force shall have effect as part of the said schedule.

(4.) A copy of every such order, duly authenticated, shall be transmitted to the Army Council within three days after the making thereof.

(5.) The officer or non-commissioned officer who demands carriages or animals in pursuance of this part of this Act shall pay the sums due in respect of the same to the owners or drivers of the carriages or animals, and one-third part of such payment shall in each case, if required, be made before the carriage is loaded; and such payments shall be made, if required, in the presence of a justice or constable.

(6.) If an officer or non-commissioned officer is from any cause unable to pay the amount due to the owner or driver of any carriage or animal, he shall make up with such owner or driver and sign an account of the amount due to him, and forthwith transmit the account so signed to the Army Council, who shall forthwith cause the amount named therein to be paid to such owner or driver.

Annual list
of persons
liable to
supply
carriages.

114. (1.) The authority hereinafter mentioned for any place may cause annually a list to be made out of all persons in such place, or any particular part thereof, liable to furnish carriages and animals under this Act, and of the number and description of the carriages and animals of such persons; and where a list is so made, any justice may by warrant require any constable or constables having authority within such place to give from time to time, on demand by an officer or non-commissioned officer under this Act, orders to furnish carriages and animals, and such warrant shall be executed as if it were a special warrant issued in pursuance of this Act on such demand, and the orders shall specify the like particulars as such special warrant.

(1A.) For the purpose of assisting the authority hereinafter mentioned in the preparation of such list as aforesaid, any

proper officer authorised in that behalf by the authority shall be entitled at all reasonable times to enter any premises in which he has reason to believe that any carriages or animals are kept, and to inspect any carriages or animals which may be found therein. Part III.
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If any such officer so authorised is obstructed in the exercise of his powers under this provision, a justice of the peace may, if satisfied by information on oath that the officer has been so obstructed, issue a search warrant authorising the constable named therein, accompanied by the officer, to enter the premises in respect of which the obstruction took place at any time between six o'clock in the morning and nine o'clock in the evening, and to inspect any carriages or animals that may be found therein.

In this provision the expression "proper officer" means any officer or person of such rank, class, or description as may be specified in an order of the Army Council made for the purpose.

(2.) The authority hereinafter mentioned shall cause such list to be kept at some convenient place open for inspection at all reasonable times by persons interested, and any person who feels aggrieved either by being entered in such list, or by being entered to furnish any number or description of carriages or animals which he is not liable to furnish, may complain to a court of summary jurisdiction, and the court, after such notice as the court think necessary to persons interested, may order the list to be amended, in such manner as the court may think just.

(3.) All orders given by constables for furnishing carriages and animals shall, as far as possible, be made from such list in regular rotation.

(4.) The authority for the purposes of this section shall, in England and Scotland, be either the Police Authority or the County Association established under the Territorial and Reserve Forces Act, 1907, and in Ireland, the Police Authority.

NOTE.

1. By A.A.A. 1911, the authorities specified in subs. (4) were substituted for the Police Authority, who were, till then, the only authority for the registration and classification of horses, &c.

2. In carrying out the scheme of the registration and classification of horses in time of peace and their supply on mobilisation for the expeditionary force and Territorial Force, general officers commanding-in-chief must obtain the consent of the County Association or the Police Authority before any registration or classification of horses can be commenced in a county or police district. The officer or official carrying out the classification must be authorized by the County Association, and application to the Police Authority should only be made in the event of the County Association refusing consent. In Ireland, he must be authorized by the Police Authority.

8. Subs. (4). *Police authority.* For definition see s. 190 (39).

115. (1.) His Majesty by order distinctly stating that a case of emergency exists, and signified by a Secretary of State and also in Supply of
carriages
and vessel
in case of
emergency.

Part III. Ireland the Lord Lieutenant by a like order, signified by the Chief Secretary or Under Secretary, may authorise any general or field officer commanding His Majesty's regular forces in any military district or place in the United Kingdom to issue a requisition under this section (hereinafter referred to as a requisition of emergency).

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(2.) The officer so authorised may issue a requisition of emergency under his hand, reciting the said order, and requiring justices of the peace to issue their warrants for the provision, for the purpose mentioned in the requisition, of such carriages and animals as may be provided under the foregoing provisions, and also of carriages of every description (including motor-cars and other locomotives, whether for the purpose of carriage or haulage), and of horses of every description, whether kept for saddle or draught, and also of vessels (whether boats, barges, or other) used for the transport of any commodities whatever upon any canal or navigable river, and also of aircraft of every description.

(3.) A justice of the peace, on demand by an officer of the portion of His Majesty's forces mentioned in a requisition of emergency, or by an officer of the Army Council authorised in this behalf, and on production of the requisition, shall issue his warrant for the provision of such carriages, animals, vessels and aircraft as are stated by the officer producing the requisition of emergency to be required for the purpose mentioned in the requisition; the warrant shall be executed in the like manner, and all the provisions of this Act as to the provision or furnishing of carriages and animals, including those respecting fines on officers, non-commissioned officers, justices, constables, or owners of carriages or animals, shall apply in like manner as in the case where a justice issues, in pursuance of the foregoing provisions of this Act, a warrant for the provision of carriages and animals, and shall apply to vessels and aircraft as if the expression carriages included vessels and aircraft.

(4.) The Army Council shall cause due payment to be made for carriages, animals, vessels and aircraft furnished in pursuance of this section, and any difference respecting the amount of payment for any carriage, animal, vessel, or aircraft shall be determined by a county court judge having jurisdiction in any place in which such carriage, animal, vessel, or aircraft was furnished or through which it travelled in pursuance of the requisition.

(5.) Canal, river, or lock tolls are hereby declared not to be demandable for vessels while employed in any service in pursuance of this section or returning therefrom. And any toll collector who demands or receives toll in contravention of this exemption, shall, on summary conviction, be liable to a fine not exceeding five pounds nor less than ten shillings.

(6.) A requisition of emergency, purporting to be issued in pursuance of this section, and to be signed by an officer therein stated to be authorised in accordance with this section, shall be evidence, until the contrary is proved, of its being duly issued and signed in pursuance of this Act, and if delivered to an officer of His Majesty's forces or of the Army Council shall be a sufficient authority to such officer to demand carriages, animals, vessels, and aircraft in pursuance of this section, and when produced by such officer shall be conclusive evidence to a justice and constable of the authority of such officer to demand carriages, animals, vessels, and aircraft in accordance with such requisition; and it shall be lawful to convey on such carriages, animals, vessels, and aircraft, not only the baggage, provisions, and military stores of the troops mentioned in the requisition of emergency, but also the officers, soldiers, servants, women, children, and other persons of and belonging to the same.

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(7.) Whenever a proclamation ordering the Army Reserve to be called out on permanent service or an order for the embodiment of the militia is in force, the order of His Majesty authorising an officer to issue a requisition of emergency may authorise him to extend such requisition to the provision of carriages, animals, vessels, and aircraft for the purpose of being purchased, as well as of being hired, on behalf of the Crown.

(8.) Where a justice on demand by an officer and on production of a requisition of emergency, has issued his warrant for the provision of any carriages, animals, vessels, or aircraft, and any person ordered in pursuance of such warrant to furnish a carriage, animal, vessel, or aircraft refuses or neglects to furnish the same according to the order, then, if a proclamation ordering the Army Reserve to be called out on permanent service or an order for the embodiment of the militia is in force, the said officer may seize (and if need be by force) the said carriage, animal, vessel, or aircraft, and may use the same in like manner as if it had been furnished in pursuance of the order, but the said person shall be entitled to payment for the same in like manner as if he had duly furnished the same according to the order.

(9) The Army Council may, by regulations under the Territorial and Reserve Forces Act, 1907, assign to county associations established under that Act the duty of furnishing, in accordance with the directions of the Army Council, such carriages, animals, vessels, and aircraft as may be required on mobilisation for the regular or auxiliary forces, or any part thereof, and where such regulations are made an officer of a county association shall have the same powers as are by this section conferred on an officer of the Army Council.

NOTE.

1. Carriages and horses of every description, (including motor cars, &c., barges and other vessels used in inland navigation, and aircraft of every

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description may, in case of emergency, be impressed under this section for any military purposes mentioned in the requisition signed by a general or field officer in command of regular forces; and may therefore be impressed for the conveyance of persons as well as of baggage. The expression "horses" includes mules and other beasts of burden or draught, s. 190 (40). Bicycles may be impressed under this section.

2. The extension of the section so as to include a power to impress aircraft was made by A.A.A., 1913.

3. As in the case of impressment under s. 112, the power to impress carriages, animals and vessels extends to any harness, saddlery or tackle ordinarily used. The power to impress mechanically propelled vehicles extends to their ordinary accessories, but not to spare parts.

4. Subs. (2). It will be observed that the amendment made by A.A.A. 1909, by which motor-cars and locomotives, whether intended for haulage or carriage, may be impressed for purposes of mobilization, is confined to cases of emergency, and will not apply in the ordinary case of impressment of carriages for the purposes of a route.

5. Subs. (4). *County Court Judge*. For definition as respects Scotland and Ireland, see s. 190 (37).

6. Subs. (6). The requisition of emergency is made to prove itself; see note 3 to s. 103.

7. Subs. (8). Every person who has carriages or animals suitable for the purpose is liable to furnish them if properly called upon to do so.

8. Subs. (9). This subsection was added by A.A.A. 1909. The officer or official who is to perform the duty of demanding a warrant under subs. (2) of this section, should be selected normally by the G.O.C. in C., the command concerned on behalf of the Army Council, and receive instructions from him as to what he is to do in case of the necessity arising.

Offences in relation to the Impressment of Carriages.

Offences by
constables.

116. Any constable who—

(1.) Neglects or refuses to execute any warrant of a justice requiring him to provide carriages, animals, vessels, or aircraft; or

(2.) Receives, demands, or agrees for any money or reward whatsoever to excuse or relieve any person from being entered in a list as liable to furnish, or from being required to furnish, or from furnishing any carriage, animal, vessel, or aircraft; or

(3.) Orders any carriage, animal, vessel, or aircraft to be furnished for any person or purpose or on any occasion for and on which it is not required by this Act to be furnished;

shall, on summary conviction, be liable to a fine of not less than twenty shillings nor more than twenty pounds

NOTE.

On summary conviction. See note to s. 98.

Offences by
persons
ordered to
furnish
carriages,
animals, or
vessels.

117. A person ordered by any constable in pursuance of this Act to furnish a carriage, animal, vessel, or aircraft who—

(1.) Refuses or neglects to furnish the same according to the orders of such constable and this Act; or

- (2.) Gives or agrees to give to a constable or to any officer or non-commissioned officer any money or reward whatsoever to be excused from being entered in a list as liable to furnish, or from being required to furnish, or from furnishing, or in lieu of furnishing, any carriage, animal, vessel, or aircraft in pursuance of this Act; or

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- (3.) Does any act or thing by which the execution of any warrant or order for providing or furnishing carriages, animals, vessels, or aircraft is hindered,

shall, on summary conviction, be liable to pay a fine of not less than forty shillings nor more than ten pounds.

NOTE.

On summary conviction. See note to s. 98.

118. (1.) Any officer or soldier who commits any offence in relation to the impressment of carriages for which he is liable to be punished under Part I of this Act, other than an offence in respect of which any other remedy is given by this Part of this Act to the person aggrieved, shall, on summary conviction, be liable to a fine not exceeding fifty pounds nor less than forty shillings.

Offences by
officers or
soldiers.

(2.) A certificate of a conviction for an offence under this section shall be transmitted by the court making such conviction to the Army Council.

NOTE.

Any other remedy. Viz., under s. 119. The provisions of s. 162, as to the adjustment of military and civil law, should also be borne in mind.

*Supplemental Provisions as to Billeting and Impressment
of Carriages.*

119. (1.) The following persons, that is to say,

- (a.) If any officer or soldier fails to comply with the provisions of this part of this Act with respect to the payment of a sum due to a keeper of a victualling house or in respect of carriages or animals, or to the making up of an account of the sum due, the person to whom the sum is due; or

Application
to court of
summary
jurisdiction
respecting
sums due to
keepers of
victualling
houses or
owners of
carriages,
&c.

- (b.) If a keeper of a victualling house suffers any ill-treatment by violence, extortion, or making disturbance in billets from any officer or soldier billeted upon him, or if the owner or driver of any carriage, animal, vessel, or aircraft furnished in pursuance of this part of this Act suffers any ill-treatment from any officer or soldier, the person suffering such ill-treatment, but, when there is an officer commanding such officer or soldier present at the place, only after first making due complaint, if practicable, to such commanding officer,

Part III. may apply to a court of summary jurisdiction, and such court, if satisfied on oath of such failure or such ill-treatment, and of the amount fairly due to the applicant, including the costs of his application to the court of summary jurisdiction, shall certify the same to the Army Council, who shall forthwith cause the amount due to be paid.

ss.

119-121.

(2.) Provided that the Army Council if it appears to them that the amount named in such certificate is not justly due, or is in excess of the amount justly due, may direct a complaint to be made to a court of summary jurisdiction for the county, borough, or place for which the court giving the certificate acted, and the court after hearing the case may by order confirm the said certificate, or vary it in such manner as to the court seems just.

Provisions
as to
constables,
police
authorities,
and justices.

120. (1.) A constable shall observe the directions given to him for the due execution of this part of this Act by the police authority; and the police authority, or any member thereof, and every justice of the peace may, if it seem necessary, and in the absence of a constable shall, themselves or himself, exercise the powers and perform the duties by this Part of this Act vested in or imposed on a constable, and in such case every such person is in this Part of this Act included in the expression "constable."

(2.) A person having or executing any military office or commission in any part of the United Kingdom shall not, directly or indirectly, be concerned, as a justice or constable, in the billeting of or appointing quarters for any officer or soldier or horse of the corps, or part of a corps, under his immediate command, and all warrants, acts, and things made, done and appointed by such person for or concerning the same shall be void.

NOTE.

Police authority. See definition in s. 190 (89).

Fraudulent
claim for
carriages,
animals, &c.

121. If any person—

- (1.) Forges or counterfeits any route or requisition of emergency, or knowingly produces to a justice or constable any route or requisition of emergency so forged or counterfeited; or
- (2.) Personates or represents himself to be an officer or soldier authorised to demand any billet, or any carriage, animal, vessel, or aircraft, or to be entitled to be billeted, or to have his horse billeted; or
- (3.) Produces to a justice or constable a route or requisition which he is not authorised to produce, or a document falsely purporting to be a route or requisition,

he shall be liable, on summary conviction, to imprisonment for a period not exceeding three months, with or without hard labour, or to a fine not less than twenty shillings and not more than five pounds.

NOTE.

On summary conviction. See note to s. 98

PART IV.

Part IV.

GENERAL PROVISIONS.

s. 122.

Supplemental Provisions as to Courts-Martial.

122. (1.) His Majesty may, subject to the provisions of this Act, by any warrant or warrants under His Sign Manual, in such form as His Majesty may from time to time direct, from time to time—

Royal
warrant
required for
convening
and con-
firming
general
courts-
martial.

- (a.) Convene or authorise any qualified officer to convene a general court-martial for the trial under this Act of any person subject to military law ; and
- (b.) Give a general authority to any qualified officer to convene general courts-martial for the trial, under this Act, of such persons subject to military law as may for the time being be under or within the territorial limits of his command ; and
- (c.) Empower any qualified officer to delegate to any officer under his command not below the degree of field officer, a general authority to convene general courts-martial for the trial, under this Act, of such persons subject to military law, as are for the time being under or within the territorial limits of his command ; and
- (d.) Reserve for confirmation by His Majesty, or empower any qualified officer to confirm, the findings and sentences of general courts-martial ; and
- (e.) Empower any officer for the time being authorised to confirm the findings and sentences of general courts-martial to reserve for confirmation findings or sentences of general courts-martial, or to delegate a power of confirming such findings or sentences to any officer under his command not below the degree of field officer ; and
- (f.) Revoke any warrant for the time being in force, or any part of any warrant, leaving the remainder in full force ;

Provided that where it appears to His Majesty that in any place out of the United Kingdom, where no field officer is for the time being in command, hardship would be inflicted on persons accused of offences by reason of there being no means of speedily trying such persons for offences, a warrant under this section may empower an officer to delegate to an officer not below the degree of captain any authority and power authorised under this section to be delegated to a field officer.

(2.) The same officer may or may not be appointed convening and confirming officer.

(3.) The power of convening general courts-martial, and of confirming the findings and sentences of general courts-martial, or

Part IV. either of such powers, may be granted subject to such restrictions, reservations, exceptions, and conditions as to His Majesty may seem meet, and when delegated by any officer empowered in that

s. 122.

behalf may, subject to the provisions of any warrant granting him such power, be delegated subject to such restrictions, reservations, exceptions, and conditions as to such officer may seem fit.

(4.) Warrants under this section may be addressed to officers by name or by designation of their offices, or partly in one way and partly in the other, and any warrant may or may not, according to the terms of such warrant and the mode in which the same is addressed, be limited to an officer named, or be extended to a person for the time being performing the duties of the office named, or be extended to the successors in command of an officer.

(5.) Any warrant of His Majesty issued in pursuance of this section shall be of the same force as if the provisions thereof were enacted by this Act.

(6.) "Qualified officer" for the purposes of this Act, in so far as it relates to convening or confirming the findings and sentences of general courts-martial, means any officer not below the rank of a field officer commanding for the time being any body of the regular forces either within or without His Majesty's dominions; it also includes the Lord Lieutenant of Ireland, the Governor-General of India, and a Governor of any colony on whom the command of any part of His Majesty's forces may be conferred by His Majesty.

NOTE.

1. See Ch. V, paras. 19-23 and 91-95.

2. For forms of Court-Martial Warrants, see pp. 722-726.

3. Subs. (6). Under this sub-section as amended by A.A.A. 1909, a Governor of a colony can by warrant be authorised to convene, and confirm the findings and sentences of, general courts-martial, if he has had conferred upon him the command of any of His Majesty's forces. For the present the issue of general court-martial warrants has, except in the case of South Africa, been restricted to Governors of colonies in which there are no regular troops.

4. A Governor to whom a general court-martial warrant is issued may convene and confirm general courts-martial within the territorial limits of the colony for the trial of offences committed against the Army Act by persons subject to that Act. For instance, if a force is raised in the colony under the Army Act, any offence committed against that Act by a member of such force while within the territorial limits of the colony may be tried by a court-martial—the court being convened and the proceedings confirmed under authority of the warrant issued to the Governor. Or, again, when a force raised in the colony under the colonial enactment is serving for the time being solely under the Army Act, and *not* under the colonial enactment, offences against the Army Act may be dealt with by court-martial within the colony under the general court-martial warrant issued to the Governor.

5. The Governor cannot convene or confirm a court-martial held outside the territorial limits of the colony; but where troops who are subject to the Army

Act are embarked in ships (not being ships commissioned by His Majesty) at ports in a colony where there are no regular troops for conveyance to a seat of war, the Governor of that colony, if in possession of a general court-martial warrant, may issue a warrant, on A. F., A. 5, to the senior combatant officer on board any such ship, if not below the rank of captain, empowering him to convene and confirm district courts-martial held for the trial of a person under his command who is subject to the Army Act. The warrant thus given (A.F., A. 5) should be granted for the period of the voyage only, and will become inoperative as soon as the troops reach the port of disembarkation when they come under the command of an officer of the regular forces having power to convene and confirm general courts-martial.

6. When the force is returning to the colony an officer of the regular forces having power to convene general courts-martial (usually the general officer commanding at the port of embarkation) will give to the senior combatant officer on board a ship (not being a ship commissioned by His Majesty) if he is not below the rank of captain, a warrant on A.F., A. 5 for use during the voyage to the colony. This latter warrant will lapse as soon as the troops disembark in the colony.

123. (1.) Any officer or person authorized to convene general courts-martial may—

- (a.) Convene a district court-martial for the trial under this Act of any person under his command who is subject to military law ; and
- (b.) Empower any person under his command not below the rank of captain to convene a district court-martial for the trial under this Act of any person under the command of such last mentioned officer who is subject to military law ; and
- (c.) Confirm the finding and sentence of any district court-martial, or empower any officer whom he has power to authorise to convene district courts-martial to confirm the finding and sentence of any district court-martial.

Authority of officer empowered to convene general courts-martial required for convening and confirming district court-martial.

(2.) The same officer may or may not be appointed convening and confirming officer under this section.

(3.) The power of convening, and of confirming the findings and sentences of, district courts-martial, or either of such powers, may be granted under this section, subject to such restrictions, reservations, exceptions, and conditions as to the officer granting such power may seem meet.

(4.) Any authority under this section for convening district courts-martial may be addressed to an officer by name or by designation of his office, or partly in one way and partly in the other, and may or may not, according to the terms thereof and the mode in which the same is addressed, be limited to an officer named, or be extended to a person holding for the time being or performing the duties of the office, or be extended to the successors in command of such officer.

Part IV.

NOTE.

123-125. ss. 1. General officers commanding-in-chief may delegate the power of convening and confirming district courts-martial to the following officers —

General officers commanding divisions, including Territorial Force divisional commanders

General or other officers not below the rank of Lieutenant-colonel, commanding brigades of the Regular Forces, and coast defence commanders.

The power may also be delegated, in case of necessity, to other officers not below the rank of Lieutenant-colonel.

2. In granting a delegated warrant on A.F., A. 5 it should be clearly shown that during the absence of the officer to whom such warrant is issued, the powers therein conferred may be exercised by the officer on whom the command devolves, if he is not under the rank of Lieutenant-colonel.

Right of person tried to copy of proceedings of court-martial.

124. Any person tried by a court-martial shall be entitled, on demand, at any time in the case of a general court-martial within seven years, and in the case of any other court-martial within three years after the confirmation of the finding and sentence of the court, to obtain from the officer or person having the custody of proceedings of such court a copy thereof, including the proceedings with respect to the revision and confirmation thereof, upon payment for the same at the prescribed rate, not exceeding twopence for every folio of seventy-two words, and for the purposes of this section the proceedings of courts-martial shall be preserved in the prescribed manner.

NOTE.

1. *Prescribed rate.* See R.P. 99. If an application is made for a copy of part only of the proceedings, it should be complied with.

2. *Prescribed manner.* See R.P. 98, and K.R. 1928.

3. This section might possibly be held not to apply to the case of a court-martial where the finding is one of acquittal, and thus requires no confirmation, or where the finding and sentence are not confirmed; but the proceedings of every such court-martial will be kept for the period of time mentioned in R.P. 98, and the officer or person having the custody of them will give copies in accordance with this section and R.P. 99; see K.R. 595.

Summoning and privilege of witnesses at court-martial.

125. (1.) Every person required to give evidence before a court-martial may be summoned or ordered to attend in the prescribed manner.

(2.) Every person attending in pursuance of such summons or order as a witness before any court-martial shall, during his necessary attendance in or on such court, and in going to and returning from the same, have the same privilege from arrest as he would have if he were a witness before a superior court of civil jurisdiction.

NOTE.

1. *Prescribed manner.* See R.P. 78. For form of Summons, see R.P. App. II, pp. 699, 700.

2. *Privilege from arrest.* This privilege is from arrest on civil process, as, e.g., for debt, while going to the place of trial, attending there, and returning home. There is no privilege from arrest on any criminal process. The courts are disposed to be liberal in determining what is reasonable time for going,

staying, or returning; thus, a witness in a cause tried on Friday and arrested on Saturday evening when entering the coach to return home was held to be improperly arrested. The remedy for an improper arrest is to apply to the court on whose process the arrest took place, or to apply for a *habeas corpus*.

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—
as.
125-126.

126. (1.) Where any person who is not subject to military law commits any of the following offences; that is to say, Misconduct of civilian at court-martial.

(a.) On being duly summoned as a witness before a court-martial, and after payment or tender of the reasonable expenses of his attendance, makes default in attending; or

(b.) Being in attendance as a witness—

(i.) Refuses to take an oath legally required by a court-martial to be taken; or

(ii.) Refuses to produce any document in his power or control legally required by a court-martial to be produced by him; or

(iii.) Refuses to answer any question to which a court-martial may legally require an answer,

the president of the court-martial may certify the offence of such person under his hand to any court of law in the part of His Majesty's dominions where the offence is committed which has power to punish witnesses if guilty of like offences in that court, and that court may thereupon inquire into such alleged offence, and after examination of any witnesses that may be produced against or for the person so accused, and after hearing any statement that may be offered in defence, if it seem just, punish such witness in like manner as if he had committed such offence in a proceeding in that court.

(2.) Where a person not subject to military law when examined on oath or solemn declaration before a court-martial wilfully gives false evidence, he shall be liable on indictment or information to be convicted of and punished for the offence of perjury, or the offence by whatever name called in the part of His Majesty's dominions in which the offence is tried which, if committed in England, would be perjury.

(3.) Where a person not subject to military law is guilty of any contempt towards a court-martial, by using insulting or threatening language, or by causing any interruption or disturbance in its proceedings, or by printing observations or using words calculated to influence the members of or witnesses before such court, or to bring such court into disrepute, the president of the court-martial may certify the offence of such person, under his hand, to any court of law in the part of His Majesty's dominions where the offence is committed which has power to commit for contempt, and that court may thereupon inquire into such alleged offence, and after hearing any witnesses that may be produced against or on behalf of the person so accused, and after hearing

Part IV. any statement that may be offered in defence, punish or take steps
 ss. for the punishment of such person in like manner as if he had
 126-129. been guilty of contempt of that court.

NOTE.

1. Subs. (2). *The offence of perjury.* See the Perjury Act, 1911, (1 and 2 Geo. V c. 6).

2. Subs. (3). The object of this sub-section is to enable courts-martial to obtain the punishment of civilians guilty of contempt of court. Usually exclusion from the court will be the best mode of dealing with the case; care being taken not to use any unnecessary force. If it is requisite to apply to a court, the application should be made in England or Ireland to the High Court of Justice; and in Scotland to the Court of Session.

3. The certificate of the president under subs. (3) need not be in any particular form, but should be addressed to the court to which the certificate is to be sent, and should state the name, address, and description of the person who has committed the offence, and the offence which he has committed. It will usually be desirable to make a formal application to the court to act upon the certificate.

4. A civilian witness, if abroad, cannot be compelled to attend a court-martial in the United Kingdom.

Court-martial governed by English law only.

127. A court-martial under this Act shall not, as respects the conduct of its proceedings, or the reception or rejection of evidence, or as respects any other matter or thing whatsoever, be subject to the provisions of the Indian Evidence Act, 1872, or to any Act, law, or ordinance of any legislature whatsoever other than the Parliament of the United Kingdom.

NOTE.

A soldier, wherever he goes, carries with him the military law of his country, that is to say, the Army Act. The Indian Evidence Act, 1872, enacted that the law of evidence of that country should apply to courts-martial, and by inadvertence this was made apparently to apply to British courts-martial, consequently it was thought necessary to reverse the Indian enactment.

Rules of evidence to be the same as in civil courts.

128. The rules of evidence to be adopted in proceedings before courts-martial shall be the same as those which are followed in civil courts in England; and no person shall be required to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a civil court.

NOTE.

Practically this section is merely a declaration of the law, as even without it, military courts would be bound to follow the rules of evidence in civil courts. As to evidence generally, see Ch. VI, and R.P. 73-86.

Position of counsel at courts-martial.

129. Whereas it is expedient to make provision respecting the conduct of counsel when appearing on behalf of the prosecution or defence at courts-martial in pursuance of rules under this Act, be it therefore enacted as follows:—

(1.) Any conduct of a counsel which would be liable to censure, or a contempt of court, if it took place before His Majesty's High Court of Justice in England, shall likewise be deemed liable to

censure, or a contempt of court, in the case of a court-martial; and the rules laid down for the practice of courts-martial and the guidance of counsel shall be binding on counsel appearing before such courts-martial, and any wilful disobedience of such rules shall be professional misconduct, and, if persevered in, be deemed a contempt of court.

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—
ss.
129-130.

(2.) Where a counsel is guilty of conduct liable to censure, or a contempt of court, such offence shall be deemed to be an offence within the meaning of section one hundred and twenty-six of this Act, and the president of the court-martial may certify the same to a court of law accordingly; and the court of law to which the same is certified shall deal with such offence in the same manner as if it had been committed in a proceeding before that court.

(3.) A court-martial may, by order under the hand of the president, cause a counsel to be removed from the court who is guilty of such an offence as may, in the opinion of the court-martial, require his removal from court, but in every such case the president shall certify the offence committed to a court of law in manner provided by the above-mentioned section.

NOTE

1. See as to counsel, R P. 88 to 94.
2. Subs. (3). The removal of a counsel from the court could only be justified under very grave circumstances.

130. (1.) Where it appears on the trial by court-martial of a person charged with an offence that such person is by reason of insanity unfit to take his trial, the court shall find specially that fact; and such person shall be kept in custody in the prescribed manner until the directions of His Majesty thereon are known, or until any earlier time at which such person is fit to take his trial.

Provision in
case of
insane
persons.

(2.) Where on the trial by court-martial of a person charged with an offence it appears that such person committed the offence, but that he was insane at the time of the commission thereof, the court shall find specially the fact of his insanity, and such person shall be kept in custody in the prescribed manner until the directions of His Majesty thereon are known.

(3.) In either of the above cases His Majesty may give orders for the safe custody of such person during his pleasure in such place and in such manner as His Majesty thinks fit.

(4.) A finding under this section shall be subject to confirmation in like manner as any other finding.

(5.) If a person imprisoned or undergoing detention by virtue of this Act becomes insane, then, without prejudice to any other provision for dealing with such insane person, a Secretary of State in any case, and in the case of a person confined in India the Governor-General of India, or the Governor of any presidency in which the person is confined, and in the case of a person confined in a colony the Governor of that colony, may, upon a certifi-

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Part IV. cate of such insanity by two qualified medical practitioners, order
 ss.
 180-181. for the reception of insane persons in the United Kingdom, India, or the colony, according as the person is confined in the United Kingdom, India, or the colony, there to remain for the unexpired term of his imprisonment or detention, and upon such person being certified in the like manner to be again of sound mind, may order his removal to any prison or detention barrack in which he might have been confined if he had not become insane, there to undergo the remainder of such punishment.

NOTE.

1. As to insanity in connection with responsibility for crime, see Ch. VII, para. 9.

2. Subs. (2). *Prescribed.* See R.P. 57 (O) and note.

3. Subs. (5). *Imprisoned or undergoing detention by virtue of this Act.* This refers only to persons under sentence, and not to persons in custody awaiting trial.

4. This sub-section no longer applies to persons undergoing imprisonment or detention in England. The removal of such persons to criminal lunatic asylums is the province of the Home Secretary; see the Criminal Lunatics Act, 1884, (47-48 Vict. c. 64.)

General Provisions as to Prisons and Detention Barracks.

Arrange-
ments with
Indian and
colonial
govern-
ments as to
prisons.

181. (1.) A Secretary of State may from time to time make arrangements with the Governor-General of India or the Governor of a colony for the reception in any prison in India or in such colony of prisoners under this Act, and of deserters or absentees without leave from His Majesty's service, on payment of such sums as are provided by the arrangement, and the governor of any prison to which any such arrangement relates shall be under the same obligation as the governor of a prison in the United Kingdom to receive and detain such prisoners, deserters, and absentees without leave:

(2.) Provided that where a person has been sentenced in India or in a colony to a term of imprisonment or detention exceeding twelve months, or to a term of penal servitude, he shall be transferred as soon as practicable to a prison or detention barrack or convict establishment within the United Kingdom, unless in the case of imprisonment or detention the court shall for special reasons otherwise order, there to undergo his sentence, or unless he belongs to a class with respect to which a Secretary of State has declared that, by reason of the climate or place of his birth or the place of his enlistment, or otherwise, it is not beneficial to the person to transfer him to the United Kingdom; every such declaration shall be laid before both Houses of Parliament.

(3.) Any order which can be made under this section by the court may be made by the confirming authority in confirming the finding and sentence, and in the case of any commutation or remission of sentence, may be made by the authority commuting or remitting the sentence.

See
Amendments
on §§131-5

MANUAL OF MILITARY LAW

AMENDMENTS

For the existing Sections 131 to 135 of the Army Act, and notes thereto, on pages 498-502, *substitute*:—

General Provisions as to Prisons and Detention Barracks.

131. (1) The governor of every prison in the United Kingdom shall receive and confine, until discharged or delivered over in due course of law—

Duty of governor of prison to receive prisoners, deserters and absentees without leave.

(a) all prisoners sent to such prison in pursuance of this Act, and

(b) every person delivered into his custody as a deserter or absentee without leave by any person conveying him under legal authority on production of the warrant of a court of summary jurisdiction on which such deserter or absentee without leave has been taken or committed, or of some order from a Secretary of State which order shall continue in force until the deserter or absentee without leave has arrived at his destination.

(2) Every such governor shall also receive into his custody for a period not exceeding seven days any soldier in military custody upon delivery to him of a written order purporting to be signed by the commanding officer of such soldier.

(3) The provisions of this section with respect to the governor of a prison in the United Kingdom shall apply to a person having charge of any police station or other place in which prisoners may legally be confined.

NOTE.

Subs. (2). The object of this is to provide for the safe keeping during a halt on the line of march of soldiers in military custody. For form of order, see R.P., App. III, Form Q. A soldier in a military capacity cannot, whether under one or more warrants, be legally confined in a prison, police station, &c., for any period in excess of seven days under the provisions of this subsection.

132. (1) It shall be lawful for a Secretary of State, and in India for the Governor-General, to set apart any building or part of a building under the control of the Secretary of State or Governor-General as a military prison or detention barrack.

Establishment and regulation of military prisons and detention barracks.

(2) It shall be lawful for a Secretary of State, and in India for the Governor-General, from time to time to make, alter, and repeal rules—

(a) for the government, management, and regulation of military prisons and detention barracks; and

(b) for the appointment and removal and powers of inspectors, visitors, governors, and officers thereof; and

THE HISTORY OF THE CITY OF BOSTON

BY
JOSEPH NEASE

IN TWO VOLUMES.

BOSTON: PUBLISHED BY
JOSEPH NEASE, 1792.

The history of the city of Boston, from its first settlement in 1630, to the present time. It contains a full and accurate account of the city's growth, its commerce, its manufactures, its education, its religion, and its civil and military history. The author has consulted the most authentic sources of information, and has endeavored to present a faithful and interesting narrative of the city's progress. The work is divided into two volumes, and is published by Joseph Nease, 1792.

- (c) for the labour of military or other prisoners and soldiers undergoing detention therein, and for enabling such prisoners or soldiers to earn, by special industry and good conduct, a remission of portion of their sentence; and
- (d) for the safe custody of such prisoners or soldiers and the maintenance of discipline among them, and the punishment by personal correction, restraint or otherwise of offences committed by such prisoners or soldiers:

Provided that—

- (i) such rules shall not authorise corporal punishment to be inflicted for any offence, nor render the imprisonment or detention more severe than it is under the law in force for the time being in any public prison in England subject to the Prison Act, 1877; and
- (ii) all the regulations made under the Prison Act, 1898, as to the duties of gaolers and medical officers and all regulations contained in the Coroners Act, 1887, as to the duties of coroners with respect to inquests in prisons and detention barracks, shall be contained in such rules, so far as the same can be made applicable.

The Secretary of State and Governor-General shall by rule under this subsection make special provision as to the treatment of military convicts under sentence for an offence committed on active service who, in pursuance of the provisions of this Act, are required to serve part of their sentences in a military prison.

(3) Rules under this section may apply to military prisons and detention barracks any enactments of the Prison Act, 1865, imposing punishments on any persons not prisoners.

(4) All rules made by a Secretary of State in pursuance of this section shall be laid before Parliament as soon as practicable after they are made.

NOTE

1. Subs. (1). For definitions of military prison and detention barrack, see s. 68 (2) (d) and (e).

2. Subs. (2). The orders for the interior management of military prisons and detention barracks are laid down in K.R. 709, *et seq.*, and Rules for Military Detention Barracks and Military Prisons.

3. Proviso (ii). *Regulations made under the Prisons Act, 1898, &c.* See Local Prison Rules, 87-113; Rules for Convict Prisons, 1899, 157-175; and Sect. 3 of the Coroners Act, 1887.

Provisions
as to
military
prisons and
detention
barracks on
active
service.

133. In any country in which operations against the enemy are being conducted, the powers of a Secretary of State under the last foregoing section with respect to military prisons and detention barracks shall be exercisable by the officer commanding-in-chief in the field, and shall include a power of declaring any place to be a military prison or a detention barrack, and the limitations contained in that section on the power of making rules as to the punishment of prisoners and soldiers undergoing detention and as to the severity of imprisonment and detention shall not apply: Provided that nothing in this section, or in any rules made thereunder, shall authorise flogging or other corporal punishment to be inflicted for any offence.

On the other hand, the fact that the β values are not significantly different from zero indicates that the model is not misspecified. The β values are also not significantly different from zero, indicating that the model is not misspecified. The β values are also not significantly different from zero, indicating that the model is not misspecified.

[illegible]

NOTE.

1. This section will not automatically cease to operate immediately upon operations ceasing. For a considerable time thereafter appointed prisons will continue to be military prisons, and prisoners will be detained in them until they can conveniently be removed.

2. Proviso. This prohibition will apply to native personnel if subject *only* to the Army Act; but the local law under which they are recruited may make native formations liable to corporal punishment.

134. (1) On all occasions of death by violence or attended with suspicious circumstances, in any military prison or detention barrack in India, an inquest shall be held to make inquiry into the cause of death.

Inquests on deaths in military prisons and detention barracks in India.

(2) The commanding officer shall cause notice to be given to the nearest magistrate duly authorised to hold inquests, and such magistrate shall hold an inquest into the cause of any such death, in the manner and with the powers provided in the case of similar inquiries held under the law for the time being in force in India for regulating criminal procedure.

(3) Where there is no such magistrate available, the commanding officer shall convene a court of inquest which shall be convened and shall hold the inquest in such manner as may be prescribed.

NOTE.

Subs. (3). *As may be prescribed.* See R.P. 127.

135. A Secretary of State may from time to time make arrangements with the Governor-General of India or the Governor of a colony for the reception in any prison in India or in such colony of prisoners under this Act and of deserters or absentees without leave from His Majesty's service on payment of such sums as may be provided by the arrangement and the governor of any prison to which any such arrangement relates shall be under the same obligation as the governor of a prison in the United Kingdom to receive and detain such prisoners, deserters and absentees without leave, and the provisions of section one hundred and thirty-one of this Act shall apply accordingly with this modification, that the reference to orders from a Secretary of State shall be construed as including orders from the Governor-General of India or the Governor of the colony as the case may be.

Arrangements as to civil prisons in India or colony.

NOTE.

Same obligation. See s. 131.

NOTE.

Part IV.

—
ss.
131-132

1. Under s. 60 an offender sentenced to penal servitude in India or a colony must be sent to a penal servitude prison as soon as practicable, to undergo his sentence, and under this section, that prison must be in the United Kingdom, unless he belongs to a class to which a declaration of the Secretary of State, made under this section, is applicable. An offender sentenced in India or a colony to imprisonment or detention must also, if the term of his sentence exceeds twelve months, be sent home to undergo his sentence, unless he belongs to such class as aforesaid, or unless the court which tried him, or the authority confirming or commuting or remitting the sentence, for special reasons otherwise order.

2. Under this section the Secretary of State made general regulations dated October, 1881, declaring it not to be beneficial to any of the following classes to be transferred to the United Kingdom when under sentence of penal servitude or imprisonment :

(1.) By reason of climate :—

Asiatics and Africans.

Other persons of colour.

(2.) By reason of place of birth :—

Persons born out of the United Kingdom and domiciled in any place not in the United Kingdom.

(3.) By reason of place of enlistment :—

Persons engaged for service in the Royal Malta Artillery, or in any Indian or colonial corps.

These regulations now apply also to persons under sentences of detention. See A.O. 132 of 1907.

3. For definitions of India and colony see s. 190 (21), (28). For the purpose of the provisions of the Act relating to the execution of sentences of penal servitude, imprisonment, and detention, the Channel Islands and Isle of Man are deemed to be colonies ; s. 187 (2).

132. (1.) The governor of every prison in the United Kingdom, and the governor of every prison in India or a colony who is under the same obligation as the governor of a prison in the United Kingdom, shall receive and confine, until discharged or delivered over in due course of law, all prisoners sent to such prison in pursuance of this Act, and every person delivered into his custody as a deserter or absentee without leave by any person conveying him under legal authority, on production of the warrant of a court of summary jurisdiction on which such deserter or absentee without leave has been taken or committed, or of some order from a Secretary of State, or from the Governor-General of India or the Governor of a colony, which order shall continue in force until the deserter or absentee without leave has arrived at his destination.

Duty of governor of prison to receive prisoners, deserters and absentees without leave.

(2.) Every such governor shall also receive into his custody for a period not exceeding seven days, any soldier in military custody upon delivery to him of a written order purporting to be signed by the commanding officer of such soldier.

(3.) The provisions of this section with respect to the governor of a prison in the United Kingdom shall apply to a person having charge of any police station or other place in which prisoners may legally be confined.

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Part IV.

NOTE.

ss.
132-133.

1. Subs. (1). *Same obligation.* See s. 181.
- 2 Subs. (2). A soldier in a military capacity cannot, whether under one or more warrants, be legally confined in a prison, police station, &c., for any period in excess of seven days under the provisions of this sub-section.
3. For definitions of India and colony, see s. 190 (21), (23), and as to the Channel Islands and Isle of Man, s. 187 (2).
- 4 Subs. (2). The object of this is to provide for the safe keeping during a halt on the line of march of soldiers in military custody.

Military Prisons and Detention Barracks.

Establish-
ment and
regulation
of military
prisons.

133. (1.) It shall be lawful for a Secretary of State and in India for the Governor-General, to set apart any building or part of a building under the control of the Secretary of State or Governor-General as a military prison or detention barrack, or as a public prison for the imprisonment of military prisoners, and to declare that any such building or part of a building shall be a military prison or a detention barrack, or a public prison, as the case may be, and every military prison so declared shall be deemed to be a public prison within the meaning of the provisions of this Act relating to imprisonment, and if such prison is in India shall be deemed to be an authorised prison.

(2.) It shall be lawful for a Secretary of State, and in India for the Governor-General, from time to time to make, alter, and repeal rules for the government, management, and regulation of military prisons and detention barracks, and for the appointment and removal and powers of inspectors, visitors, governors, and officers thereof, and for the labour of military or other prisoners and soldiers undergoing detention therein, and for enabling such prisoners or soldiers to earn, by special industry and good conduct, a remission of a portion of their sentence, and for the safe custody of such prisoners or soldiers, and for the maintenance of discipline among them, and for the punishment by personal correction, restraint, or otherwise of offences committed by such prisoners or soldiers, so, however, that such rules shall not authorise corporal punishment to be inflicted for any offence, nor render the imprisonment or detention more severe than it is under the law in force for the time being in any public prison in England subject to the Prison Act, 1877, and provided that all the regulations made under the Prison Act, 1898, as to the duties of gaolers and medical officers, and all regulations contained in the Coroners' Act, 1887, as to the duties of coroners with respect to inquests in prisons and detention barracks, shall be contained in such rules, so far as the same can be made applicable.

(3.) On all occasions of death by violence or attended with suspicious circumstances in any military prison or detention barrack in India an inquest is to be held, to make inquiry into the cause of

death. The commanding officer shall cause notice to be given to the nearest magistrate, duly authorised to hold inquests, and such magistrate shall hold an inquest into the cause of any such death, in the manner and with the powers provided in the case of similar inquiries held under the law for the time being in force in India for regulating criminal procedure. Part IV.
s. 133.

(4.) Where from any cause there is no competent civil authority available, the commanding officer shall convene a court of inquest. Such court shall be convened and shall hold the inquest in such manner as may be prescribed.

(5.) Such rules may apply to such prisons and detention barracks any enactments of the Prison Act, 1865, imposing punishments on any persons not prisoners.

(6.) All rules made by a Secretary of State in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if not, as soon as practicable after the commencement of the then next session of Parliament.

(7.) In any country in which operations against the enemy are being conducted, the powers of a Secretary of State under this section with respect to military prisons and detention barracks shall be exercisable by the officer commanding-in-chief in the field, and shall include a power of declaring any place to be a military prison or a detention barrack, and the limitations on the power of making rules as to the punishment of prisoners and soldiers undergoing detention, and as to the severity of imprisonment and detention shall not apply :

Provided that nothing in this subsection, or in any rules made thereunder, shall authorize flogging or other corporal punishment to be inflicted for any offence.

NOTE.

1. Subs. (1). This section enables a Secretary of State to set apart any building as a military prison or as a detention barrack. The section gives a similar power to the Governor-General of India.

2. The section also gives power to a Secretary of State to set apart any part of a building under his control as a public prison for the imprisonment of military prisoners. Any part of a building so set apart as a public prison can be declared by the Secretary of State to be a public prison, and necessarily comes under the rules relating to other public prisons.

3. The powers under this sub-section in respect of prisons are in practice exercised by the Secretary of State for War, and for that purpose the Home Secretary places at the disposal of the War Office, more or less permanently, the whole or some portion of civil prisons.

4. As military prisoners sentenced to imprisonment are to undergo their sentences either in military custody or in a public prison (see ss. 63 (1) 64 (1), 65 (1)), this section provides that a building declared to be a military prison shall be a public prison, so as to allow such sentences to be undergone in a military prison. As a penal servitude prisoner while in military custody may be confined in an authorised prison (s. 62 (2)), this section declares a

Part IV. military prison in India to be an authorised prison, so as to allow any such military convict to be confined during his intermediate custody in a military prison.

ss.
138-137.

5. Subs. (2). *Regulations made under the Prison Act, 1898, &c.* See R.P. 87-113 and 157-175 of the Rules for Convict Prisons, 1899, and s. 3 of the Coroners Act, 1887 (50 & 51 Vict. c. 71).

The orders for the interior management of military prisons and detention barracks, &c., are laid down in K.R., 645 *et seq.*, and Rules for Detention Barracks and Military Prisons.

6. Subs. (4). *Prescribed.* See R.P. 127.

Restrictions
on confine-
ment in
prisons in
India or
colonies,
not being
military.

184. No soldier shall be confined longer than is absolutely necessary in prisons other than military prisons in India, and the Colonies, where the rules for the government and management of such prisons differ from those made by the Governor-General of India and a Secretary of State in the case of India and the colonies respectively.

NOTE.

See for definitions of India and colony s. 190 (21), (23), and as to the Channel Islands and Isle of Man see 187 (2).

Classifica-
tion of
prisoners.

185. Whereas it is expedient that a clear difference should be made between the treatment of prisoners convicted of breaches of discipline and the treatment of prisoners convicted of offences of an immoral, dishonest, shameful, or criminal character, or sentenced to be discharged from the service with ignominy, a Secretary of State shall from time to time make rules for the classification and treatment of such prisoners.

NOTE.

See K.R., 607.

185A. [This section, introduced by A.A.A. 1906, was repealed in 1907.]

Pay.

Authorised
deductions
only to be
made from
pay.

186. The pay of an officer or soldier of His Majesty's regular forces shall be paid without any deduction other than the deductions authorised by this or any other Act or by any Royal Warrant for the time being, or by any law passed by the Governor-General of India in Council.

NOTE.

Where a court-martial has refrained from exercising its power to order payment of compensation to the Government in the case where an offender has, *e.g.*, misappropriated public money, or is otherwise subject to a public claim, the Army Council may, under the provisions of this section, and the preamble to the Pay warrant, order the amount of the public claim to be deducted from the offender's pay.

Penal
stoppages
from
ordinary
pay of
officers.

187. The following penal deductions may be made from the ordinary pay due to an officer of the regular forces:

- (1.) All ordinary pay due to an officer who absents himself without leave, or overstays the period for which leave of absence has been granted him, unless a satisfactory explanation has been given through the commanding officer of such officer, and has been approved by the Army Council;

- (2.) The sum required to make good such compensation for any Part IV. expenses, loss, damage, or destruction occasioned by the commission of any offence as may be awarded by the court-martial by whom he is convicted of such offence ; ss. 187-188.
- (3.) The sum required to make good the pay of any officer or soldier which he has unlawfully retained or unlawfully refused to pay ;
- (4.) The sum required to make good any loss, damage, or destruction of public property which, after due investigation, appears to the Army Council, or in the case of officers serving in India the Governor-General, to have been occasioned by any wrongful act or negligence on the part of the officer : Provided that where deductions have been so made from the pay of an officer serving in India the case shall, if he so require, be reported to the Secretary of State for India in Council, who may make such order thereon as he thinks fit.

NOTE.

1. This section states the penal deductions that may be made from the ordinary pay of an officer, and by implication excludes other penal deductions, but it does not prohibit deductions not penal, as, for instance, in respect of rations. As to stoppages from pay, &c., to meet public claims, or regimental debts or claims, see P.W., 8 and 22. Anything beyond ordinary pay, being in the nature of a gratuity or reward, is left entirely to the disposal of the Pay Warrant.

2. *All ordinary pay due to an officer who absents himself without leave.* This means all ordinary pay for the period of absence without leave.

3. *Para. (4).* The words "Or in the case of Officers serving in India," &c., and the proviso to this paragraph were added by A.A.A. 1912. The effect is that in India the Viceroy will decide whether or not any particular loss or damage was occasioned by an officer's wrongful act or negligence, but the officer will have a right of appeal to the Secretary of State for India in Council.

188. The following penal deductions may be made from the ordinary pay due to a soldier of the regular forces :

Penal stoppages from ordinary pay of soldiers.

- (1.) All ordinary pay for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of imprisonment awarded by a civil court or court-martial, or if he is on board one of His Majesty's ships, by the commanding officer of that ship, for every day of detention or field punishment awarded by a court-martial or by his commanding officer, and for every day whilst he is in custody on a charge for an offence of which he is afterwards convicted by a civil court or court-martial, or on a charge of absence without leave, for which he is afterwards awarded detention or field punishment by his commanding officer ;
- (2.) All ordinary pay for every day on which he is in hospital on account of sickness certified by the proper medical

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- officer attending on him at the hospital to have been caused by an offence under this Act committed by him ;
- (3.) The sum required to make good such compensation for any expenses, loss, damage, or destruction occasioned by the commission of any offence as may be awarded by the court-martial by whom he is convicted of such offence, or if he is on board of one of His Majesty's ships, by the commanding officer of that ship, or where he has confessed the offence and his trial is dispensed with by order under section seventy-three of this Act, as may be awarded by that order or by any other order of a competent military authority under that section ;
 - (4.) The sum required to make good such compensation for any expenses caused by him, or for any loss of or damage or destruction done by him to any arms, ammunition, equipment, clothing, instruments, or regimental necessaries or military decoration, or to any buildings or property, as may be awarded by his commanding officer, or, in case he requires to be tried by court-martial, by that court-martial, or if he is on board one of His Majesty's ships, by the commanding officer of that ship ;
 - (5.) Where a soldier at the time of his enlistment belonged to any part of the auxiliary forces, the sum required to make good any compensation for which at the time of his enlistment he was under stoppage of pay as a member of the auxiliary forces, and any sum which he is liable to pay by reason of his quitting the said part of the auxiliary forces upon his enlistment ;
 - (6.) Where a soldier's liquor ration is stopped by his commanding officer on board any ship, whether commissioned by His Majesty or not, the sum equivalent to such ration, whether previously drawn by the soldier or not, not exceeding one penny a day for twenty-eight days ;
 - (7.) The sum required to pay a fine awarded by a court-martial, his commanding officer, or a civil court ; and
 - (8.) The sum required to pay any sum ordered by the Army Council or any officer deputed by them for the purpose, to be paid as mentioned in this Act for the maintenance of his wife or child, or of any bastard child, or towards the cost of any relief given by way of loan to his wife or child :

Provided that—

- (a.) The total amount of deductions from the ordinary pay due to a soldier in respect of the sums required to pay any compensation, fine, or sum awarded or ordered to be paid as aforesaid, shall not exceed such sum as will leave to the soldier, after paying for his messing and washing less than one penny a day ; and

- (b.) a person shall not be subjected in respect of any compensation, fine, or sum awarded or ordered to be paid as aforesaid, to any deductions greater than is sufficient to make good the expenses, loss, damage, or destruction for which such compensation is awarded, or to pay the said sum; and
- (c.) where a soldier who is sentenced or ordered in respect of an offence on active service to forfeit all ordinary pay is liable to any other penal deductions from pay, the sentence or order shall apply only to so much of his ordinary pay as remains after those other deductions have been made.

NOTE.

1. Note 1 to s. 137 applies to this section also.

2. Para. (1). The Pay Warrant provides that in all the cases, except one, mentioned in this paragraph, pay is to be forfeited, and no discretion is given to the commanding officer whether or not to enforce wholly or partially the forfeiture. Absence as a prisoner of war, however, does not cause a forfeiture of pay, unless a Court of Inquiry decide that the soldier was taken prisoner through neglect or misconduct on his own part; and at most only the balance of pay unissued at the date of rejoining is forfeited. See P.W., arts. 977 *et seq.*

3. Section 140 (2) lays down six hours as the minimum period of absence which will count as a day of absence, unless two conditions are fulfilled, first, that the absentee was prevented from fulfilling a military duty, and second, that the duty was thrown upon some other person. Six clear hours must therefore elapse, and they must be reckoned consecutively, but it is immaterial whether they are partly in one day and partly in another. Thus, a soldier forfeits one day's pay for any period of six clear hours' continuous absence without leave, and where the absence extends over twelve hours he forfeits one day's pay in respect of any day reckoned from midnight to midnight during any portion of which he was absent. He forfeits a day's pay for any day in which, by reason of his absence, however short, a duty that ought to be performed by him is thrown upon some other person.

4. For example, if a soldier is absent from 9 P.M. on Monday until 3.5 A.M. on Tuesday, his absence counts as a day's absence, but no more, although the absence was partly on one day and partly on another. If, however, he had returned at 1 A.M., his absence could not count as a day's absence, unless meanwhile he was bound to go on guard or perform some other military duty, and in consequence of his absence some other soldier had to go on guard, or perform that duty.

5. If a soldier is absent from 6 P.M. on Monday until 6.5 A.M. on Tuesday, his absence is to be reckoned as two days' absence, and if he returned between midnight on Monday and 6 A.M. on Tuesday it would also be reckoned as two days' absence if some other soldier had to go on guard instead of him between midnight on Monday and the hour of his return..

6. In all cases the soldier must be found guilty of the absence, either by a court-martial or by his commanding officer (see R.P. 129), before forfeiture of pay for such absence can be enforced.

7. Under s. 78 (1) the competent military authority can order that the soldier shall forfeit his pay for every day in custody on a charge of desertion or fraudulent enlistment when he confesses his guilt and his trial is dispensed with.

8. The principle of note 3 *sup.* applies also to the reckoning of a day's imprisonment or detention.

Part IV. 9. Para. (2). This deduction is only authorised where the sickness is caused by an offence of which a soldier has been found guilty and therefore does not extend to sickness caused by immorality or intemperance, when there is no conviction (either by a court-martial or under the award of a commanding officer) for an offence by which the sickness was caused. The medical officer must attend the investigation of the offence, whether before the court-martial or the commanding officer, and give evidence in substantiation of the facts contained in his certificate. The certificate alone is not sufficient. See K.R., 504, 505. The Pay Warrant provides that where the deduction is authorised under this paragraph the pay is in every case to be forfeited; (P.W., art. 977 (3) (d)).

s. 139.

10. Para. (3). As to the statement of the ground for compensation in the charge, see R.P. 11 (F) and note, and App. I, Note as to the use of Forms of Charges (23), p. 648.

11. Under paras. (3) and (4) a soldier is not liable for the ordinary expenses of his prosecution, capture, or conveyance, or indirect losses of a similar kind. Nor would a soldier be liable under them for damage to a military policeman's clothes, because the policeman fell down and damaged them while in pursuit of the soldier when endeavouring to escape. But where a soldier refused to march, being able to do so, and a cab had to be hired for his conveyance, he was held liable for the expense thus incurred by his contumacy.

12. *Dispensed with by order.* As this is limited to an order under s. 73, a commanding officer who of his own authority abstains from sending an accused soldier for trial must dismiss the charge (see s. 46 (1), R.P. 4 (A) and note), and therefore cannot in the technical sense exercise any power under this paragraph of ordering any deduction from the soldier's pay.

13. Para. (4). For the purposes of trial, the amount of compensation will be estimated as follows:—

Where an article which has an official value has been lost or rendered unserviceable, a witness is required who would prove the present value of the article upon a basis of its age and by reference to the regulations for fixing the value of the article at that age. This value would be included in the particulars of the charge.

When the article has no official value expert evidence is required to prove the approximate value, which will be included in the particulars.

When an article has been damaged but not rendered unserviceable, expert evidence is required to prove the pecuniary amount of the damage, which will be either the cost of repairing it, if it can be repaired, or the loss of value caused by the act of the accused if it cannot be repaired, or the cost of repair plus any ultimate loss of value due to the act of the accused.

Similar principles will be observed if the Commanding Officer deals with the case himself.

Buildings or property. These words are not confined to public buildings, and consequently a soldier may be ordered to pay damages for broken windows or other slight damage done by him. A serious case of this sort is necessarily a case which should not be disposed of by a commanding officer.

14. Where a soldier has been convicted by court-martial for an offence, his commanding officer cannot subsequently award compensation for damage caused through that offence.

15. *Requires to be tried by court-martial.* See s. 46 (8).

16. Para. (7). This paragraph will enable an officer to pay a fine imposed on a soldier by a civil court, and deduct it from his pay, and thus prevent the

soldier from being imprisoned for non-payment of the fine. A court-martial or a commanding officer cannot award a fine except for drunkenness. See s. 44 n, and note (18) thereto.

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17. Para. (8). See s. 145, under which the Army Council or the officer deputed by them for the purpose, can order this deduction, either in accordance with the order of court or otherwise.

18. Proviso (a). If a soldier is subjected to a deduction in respect of one matter up to the full amount allowed by this proviso, any deduction subsequently imposed cannot begin to be enforced till the whole sum in respect of which the first deduction was imposed is satisfied. If a soldier under deductions not up to the full amount allowed by this proviso is subjected to a further deduction or deductions, which taken altogether would exceed that amount, the latter deductions must abate in order of priority, so that in no case may the soldier have less than the penny a day. See, however, Army Council's instructions to Art. 988 of the Pay Warrant laying down that, except in special cases, the issue of cash may be a sum not exceeding sixpence a day.

19. Proviso (b). The court will necessarily take care to find as accurately as possible the amount for which deductions are to be made from a soldier's pay, but as in some cases they will be unable to ascertain the amount accurately, and in others may be mistaken, care will have to be taken in enforcing their sentence not to contravene this proviso. The sentence of the court will not justify any deduction which exceeds the actual loss.

If a soldier is sentenced to stoppages for losing by neglect articles of his clothing or equipments, and these articles are afterwards found and in serviceable condition, he has "made good" the loss. Where two soldiers were convicted of having jointly injured public property, each was held to be rightly sentenced to make good the whole amount of the injury sustained; and in the event of one soldier dying, or otherwise ceasing to be amenable to the award, the whole amount might be legally levied upon the other. Where, however, both remained amenable, the stoppages would be properly divided between them in equal proportions.

The principle is, that stoppages are intended, not for punishment, but to compensate for loss sustained.

20. Proviso (c). As to the power to order forfeiture of pay for offences committed on active service, see ss. 44 (6) and 46 (2) (d). The effect of the proviso is that any forfeiture ordered under those provisions will only take effect on the balance of the soldier's pay which remains after providing for any other penal deductions to which he may be liable at the time. See also K.R. 498 (iii b) and 494 (iv).

139. Any deduction of pay authorised by this Act may be remitted in such manner and by such authority as may be from time to time provided by Royal Warrant, and subject to the provisions of any such warrant may be remitted by the Army Council.

How deduction of pay may be remitted.

140. (1.) Any sum authorised by this Act to be deducted from the ordinary pay of an officer or soldier may, without prejudice to any other mode of recovering the same, be deducted from the ordinary pay or from any sums due to such officer or soldier in such manner, and when deducted or recovered may be appropriated in such manner, as may be from time to time directed by any regulation or order of the Army Council.

Supplemental as to deductions from ordinary pay.

(2.) And any such regulation or order may from time to

Part IV. time declare what shall be deemed for the purposes of the provisions of this Act relating to deductions from pay to constitute a day of absence or a day of imprisonment or detention, so, however, that no time shall be so reckoned as a day unless the absence or imprisonment or detention has lasted for six hours or upwards, whether wholly in one day or partly in one day and partly in another, or unless such absence prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person.

(3.) In cases of doubt as to the proper issue of pay or the proper deduction from pay due to any officer or soldier, the pay may be withheld until His Majesty's order respecting it has been signified through a Secretary of State, which order shall be final.

NOTE.

1. Subs. (1). *Sums due.* This will allow the amount to be deducted from prize-money or other sums earned but not paid to an officer or soldier. It would include good conduct pay or deferred pay, but not money lodged in the regimental savings' bank.

2. Subs. (2). *Day of absence, imprisonment or detention.* See P.W. and notes 2 to 8 to s. 138.

Prohibition
of assign-
ment of
military
pay, pen-
sions, &c.

141. Every assignment of, and every charge on, and every agreement to assign or charge, any deferred pay, or military reward payable to any officer or soldier of any of His Majesty's forces, or any pension, allowance, or relief payable to any such officer or soldier, or his widow, child, or other relative, or to any person in respect of any military service, shall, except so far as the same is made in pursuance of a Royal Warrant for the benefit of the family of the person entitled thereto, or as may be authorised by any Act for the time being in force, be void.

NOTE.

1. The assignment of pay by an officer or soldier is void by law independently of this enactment. A pension or retiring allowance, on the other hand, would but for this enactment be assignable. See *Lucas v. Harris*, 18 Q.B.D. 127; *Crowe v. Price*, 22 Q.B.D. 429.

2. *In pursuance of a Royal Warrant.* See P.W. 1211 which provides for the stoppage of not more than two-thirds of a man's pension for the support of his family.

3. *Authorised by any Act.* See e.g. Bankruptcy Act, 1883 s. 58. Under this Act, the approval of the Head of the Department concerned must be obtained before any portion of the pay can be set aside, and it has been ruled that no portion of the pay of an officer of the British forces who is still serving should be so appropriated.

The Act 2 & 3 Vict. c. 51, which authorised the assignment, in certain cases, of a pension to guardians of the poor giving relief to a pensioner or his family, does not apply to Chelsea Pensioners.

Punish-
ment of
false oath
and per-
sonation.

142. (1.) Where any regulations made by the Army Council or the Commissioners of His Majesty's Treasury, with respect to the payment of any military reward, pension, or allowance, or any sum payable in respect of military service, or with respect to the payment of money or delivery of property in the possession of the military authorities, provide for proving, whether on oath or by statutory declaration, the identity of the recipient or any other

matter in connection with such payment, such oath may be administered and declaration taken by the persons specified in the regulations, and any person who in such oath or declaration wilfully makes any false statement shall be liable to the punishment of perjury.

(2.) Any person who falsely represents himself to any military naval, or civil authority to belong to or to be a particular man in the regular, reserve, or auxiliary forces shall be deemed to be guilty of personation.

(3.) Any person who is guilty of an offence under the False Personation Act, 1874, in relation to any military pay, reward, pension, or allowance, or to any sum payable in respect of military service, or to any money or property in the possession of the military authorities, or is guilty of personation under this section, shall be liable, on summary conviction, to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding twenty-five pounds.

(4.) Provided that nothing in this section shall prevent any person from being proceeded against and punished under any other enactment or at common law in respect of any offence, so that he be not punished twice for the same offence.

NOTE.

1. If a man personates another with intent to obtain any money or property he is guilty of an offence under the False Personation Act, 1874, and, if convicted at the assizes, is liable to penal servitude for life. In a very serious case a man might be indicted under that Act; in trivial cases it will be better to prosecute under this section.

2. Persons guilty of obtaining pay or pensions by fraudulent means can also be proceeded against, either by indictment or summarily, under the Pension and Yeomanry Pay Act, 1884 (47 & 48 Vict. c. 55), s. 3.

3. Under this section a man who falsely represents himself to any authority to belong to part of His Majesty's forces, or to be a particular man in any of His Majesty's forces, may be punished, although he does not do it with intent to obtain any money. But it will not be desirable to institute a prosecution in such cases, unless the man has, in fact, obtained some advantage, or has put the authorities to expense and inconvenience. Care must be taken not to prosecute a man for what may be mere idle talk or bravado, without any guilty intention.

4. In this, as in every other case of an offence punishable by a court of summary jurisdiction, a person who aids and abets the offence is, in England, equally punishable with the principal offender. Consequently, if A personates B, a reserve man, and thereby obtains B's pay, and hands the pay over to B or B's wife, B or B's wife is punishable as aiding and abetting the offence of personation by A.

5. An army reserve man who commits any offence under subs. (2) or (8) in the presence of an officer may, at the discretion of the officer, be ordered into either military or civil custody; and in the latter case will be tried before a court of summary jurisdiction: Reserve Forces Act, 1882, s. 6 (3).

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Exemptions of Officers and Soldiers.

ss.

143-144.

Exemptions
of officers
and soldiers
from tolls.

143. (1.) All officers and soldiers of His Majesty's regular forces on duty or on the march ; and

Their horses and baggage ; and

All prisoners under military escort ; and

All carriages and horses belonging to His Majesty or employed in his military service, when conveying any such persons as above in this section mentioned, or baggage or stores, or returning from conveying the same,

shall be exempted from payment of any duties or tolls on embarking or disembarking from or upon any pier, wharf, quay, or landing-place, or in passing along or over any turnpike or other road or bridge, otherwise demandable by virtue of any Act of Parliament already passed or hereafter to be passed, or by virtue of any Act, Ordinance, order or direction of the legislature or other authority in India or any colony :

Provided that nothing in this section shall exempt any boats, barges, or other vessels employed in conveying the said persons, horses, baggage, or stores along any canal from payment of tolls in like manner as other boats, barges, and vessels.

(2.) When any soldiers have occasion in their march by route to pass regular ferries in Scotland, the officer commanding may, at his option, pass over with his soldiers as passengers and shall pay for himself and each soldier one-half only of the ordinary rate payable by single persons, or may hire the ferry boat for himself and his party, debarring others for that time, and shall in all such cases pay only half the ordinary rate for such boat.

(3.) Any person who demands and receives any duty toll, or rate in contravention of this section shall, on summary conviction, be liable to a fine not exceeding five pounds nor less than ten shillings.

NOTE.

1. Subs. (1). *Regular forces.* This expression in this section includes the Marines and His Majesty's Indian forces, also the reserve forces when subject to military law : see s. 178 (as amended by A.A.A. 1909). See also s. 190 (8) and Reserve Forces Act, 1882, s. 14 (2). As to the application of this section to the Territorial Force, see T.R.F. Act, s. 28 (2).

2. The exemption is not a personal one, but is confined to officers and soldiers when on duty or on the march ; thus an officer driving from his private house to barracks would not be entitled to the exemption.

3. For definition of India and colony, see s. 190 (21), (23).

4. Subs. (3). *On summary conviction ;* see note to s. 98.

Exemptions
of soldiers
in respect
of civil
process.

144. (1.) A soldier of His Majesty's regular forces shall not be liable to be taken out of His Majesty's service by any process, execution, or order of any court of law or otherwise, or to be compelled to appear in person before any court of law, except in respect of the following matters, or one of them ; that is to say,

- (a.) On account of a charge of or conviction for crime ; or
(b.) On account of any debt, damages, or sum of money, when the amount exceeds thirty pounds over and above all costs of suit.
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(2.) For the purposes of this section a crime shall mean a felony, misdemeanour, or other crime or offence punishable, according to the law in force in that part of His Majesty's dominions in which such soldier is, with fine or imprisonment or some greater punishment, and shall not include the offence of a person absenting himself from his service, or neglecting to fulfil his contract, or otherwise misconducting himself respecting his contract.

(3.) For the purposes of this section a court of law shall be deemed to include a court of summary jurisdiction and any magistrate.

(4.) The amount of the debt, damages, or sum shall be proved for the purpose of any process issued before the court has adjudicated on the case by an affidavit of the person seeking to recover the same or of some one on his behalf, and such affidavit shall be sworn, without payment of any fee, in the manner in which affidavits are sworn in the court in which proceedings are taken for the recovery of the sum, and a memorandum of such affidavit shall, without fee, be endorsed upon any process or order issued against a soldier.

(5.) All proceedings and documents in or incidental to a process, execution, or order in contravention of this section shall be void ; and where complaint is made by a soldier or his commanding officer that such soldier is dealt with in contravention of this section by any process, execution, or order issued out of any court, and is made to that court or to any court superior to it, the court, or some judge thereof, shall examine into the complaint, and shall, if necessary, discharge such soldier without fee, and may award reasonable costs to the complainant, which may be recovered as if costs had been awarded in his favour in any action or other proceeding in such court.

Provided that—

- (1.) Any person having cause of action or suit against a soldier of the regular forces may, notwithstanding anything in this section, after due notice in writing given to the soldier, or left at his last quarters, proceed in such action or suit to judgment, and have execution other than against the person, pay, arms, ammunition, equipments, regimental necessities, or clothing, of such soldier ; and
- (2.) This section shall not prevent such proceeding with respect to apprentices and indentured labourers as is authorised by this Act.

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NOTE.

ss.
144-145.

Liability of
soldier to
maintain
wife and
children.

1. The history of this section is given in Clode, Mil. Forc., i. 208. It exempts a soldier from appearing in person, though not from being sued, in case of a debt under £30. The exemption does not apply to a soldier required to attend as a witness before a court of law.

2. Subs. (5). A commanding officer should complain direct to the court. He need not send the complaint through a military authority superior to himself.

145. (1.) A soldier of the regular forces shall be liable to contribute to the maintenance of his wife and of his children, and also to the maintenance of any bastard child of which he may be proved to be the father, to the same extent as if he were not a soldier; but execution in respect of any such liability or of any order or decree in respect of such maintenance shall not issue against his person, pay, arms, ammunition, equipments, instruments, regimental necessaries, or clothing, nor shall he be liable to be punished for the offence of deserting or neglecting to maintain his wife or family, or any member thereof, or of leaving her or them chargeable to any union, parish, or place.

(2.) When any order or decree is made under any Act or at common law for payment by a man who is or subsequently becomes a soldier of the regular forces either of the cost of the maintenance of his wife or child, or of any bastard child of whom he is the putative father, or of the cost of any relief given to his wife or child by way of loan, a copy of such order or decree shall be sent to the Army Council, or any officer deputed by them for the purpose, and in the case—

(a.) Of such order or decree being so sent; or

(b.) Of it appearing to the satisfaction of the Army Council, or any officer deputed by them for the purpose, that a soldier of the regular forces has deserted or left in destitute circumstances, without reasonable cause, his wife or any of his legitimate children under fourteen years of age,

the Army Council, or officer, shall order a portion not exceeding in respect of a wife and children one shilling and sixpence, and, in respect of a bastard child one shilling of the daily pay of a warrant officer not holding an honorary commission, not exceeding in respect of a wife or children one shilling and in respect of a bastard child sevenpence of the daily pay of a non-commissioned officer who is not below the rank of serjeant, and not exceeding in respect of a wife or children sixpence, and in respect of a bastard child fourpence, of the daily pay of any other soldier, to be deducted from such daily pay, and to be appropriated in liquidation of the sum adjudged to be paid by such order or decree, or towards the maintenance of such wife or children, as the case may be, in such manner as the Army Council, or officer, think or thinks fit.

(3.) Where a proceeding is instituted against a soldier of the regular forces under any Act, or at common law, for the purpose of

enforcing against him any such liability as above in this section mentioned, and such soldier is quartered out of the jurisdiction of the court, or, if the proceeding is before a court of summary jurisdiction, out of the petty sessional division in which the proceeding is instituted, the process shall be served on the commanding officer of such soldier, and such service shall not be valid unless there be left therewith, in the hands of the commanding officer, a sum of money (to be adjudged as costs incurred in obtaining the order or decree, if made against the soldier) sufficient to enable him to attend the hearing of the case and return to his quarters, and such sum may be expended by the commanding officer for that purpose; and no process whatever under any Act or at common law in any proceeding in this section mentioned shall be valid against a soldier of the regular forces if served after such soldier is under orders for service beyond the seas.

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s. 145.

Where, by an order or decree sent to the Army Council or officer in accordance with subsection (2) of this section the soldier is adjudged to pay as costs incurred in obtaining the order or decree any sum left in the hands of the Commanding Officer under this subsection, the Army Council may cause a sum equal to the sum so left to be paid in liquidation of the sum so adjudged to be paid as costs, and the amount so paid by the Army Council shall be a public debt from the soldier against whom the order or decree was made, and, without prejudice to any other method of recovery, may be recovered by deductions from his daily pay, in addition to those mentioned in sub-section (2) of this section.

NOTE.

1. K. R. 392 (vii) provides for handing over to the parish authority in certain cases a married soldier who on attestation falsely represented himself to be single.

2. Subs. (2). The Army Council have approved of the following General Officers acting as their deputies for the purpose of this sub-section:—At home, General Officers in charge of administration, the General Officers Commanding, London District, Guernsey and Alderney District, and Jersey District, General Officers Commanding regular divisions, cavalry brigades and infantry brigades; also Chief Engineers and Officers Commanding coast defences, divisional artillery and coast defence artillery *when not below the rank of Brigadier-General*; in India, the Commander-in-Chief the General Officers Commanding northern and southern armies General Officers Commanding divisions and brigades; at Gibraltar, the Commander-in-Chief and the General Officer Commanding Royal Artillery; at Malta, the Commander-in-Chief, the General Officer Commanding Royal Artillery and the Brigadier-General Commanding the infantry brigade; in South Africa, the General Officer in charge of administration and the Brigadier-Generals Commanding the Pretoria, Potchefstroom, and Cape of Good Hope districts, the General Officer Commanding the Force in Egypt; the General Officers Commanding Sierra Leone, Bermuda, Ceylon, North China, South China, Jamaica, Mauritius, Straits Settlements.

N.B.—In the event of the absence of any of the officers specified, the officer who may be, for the time being, in command is deputed to act in his

Part IV. stand. (In the absence of a General Officer in charge of administration the Senior Administrative Staff Officer will act on his behalf.)

ss.
145-151. 3. By A.A.A. 1912, the maximum amounts payable in respect of a bastard child, were increased from 6d. to 7d. in the case of a N.C.O. not below the rank of sergeant, and from 3d. to 4d. in the case of soldiers below that rank, and by A.A.A. 1913, a higher rate was imposed in the case of warrant officers not holding honorary commissions. Where an order has been made before the Act of 1912 came into operation, a further order may be made increasing the amount of the deductions to be made under the former order up to the limit fixed by that Act. See A.A.A. 1912, s. 5. (2). The Act of 1913, however, contains no corresponding provision. The higher rate should not be applied in the case of a soldier who is *voluntarily* contributing and against whom no magistrate's order has been obtained, unless he gives his consent to the higher stoppage.

4. Subs. (3). Under the Army Council's instructions to P.W. Art. 986, the amount deposited with a Commanding Officer is immediately to be notified by him to the clerk of the Justices concerned.

The last paragraph of this subsection was added by A.A.A. 1911. In the case of all orders or decrees granted on or after the 1st May, 1911, any sum adjudged to be paid on account of the money deposited with the Commanding Officer to enable a soldier to attend the hearing of the case is to be at once remitted, under the direction of the G.O.C., to the person entitled to it under the order or decree, and is regarded as a public claim which is to be discharged by stoppages from the soldier's pay (in addition to the stoppages under s. 145 (2)) at such rates as the G.O.C. may consider fair and reasonable, subject to the Army Council's instructions with reference to P.W. Arts. 986 and 988.

Officers not
to be
sheriffs or
mayors.

146. An officer of the regular forces on the active list within the meaning of any Royal Warrant for regulating the pay and promotion of the regular forces shall not be capable of being nominated or elected to be sheriff of any county, borough, or other place, or to be mayor or alderman of, or to hold any office in, any municipal corporation in any city, borough, or place in the United Kingdom.

Provided that nothing in this section shall disqualify any officer for being elected to or being a member of a county council.

NOTE.

It is generally understood that officers on full pay and soldiers are exempt from serving all offices which require the personal discharge of duty, and do not admit of the appointment of a deputy. See Ch. XII, para. 8.

Exemption
from jury.

147. Every soldier in His Majesty's regular forces shall be exempt from serving on any jury.

NOTE.

See Ch. XII, para. 8, as to the exemption of soldiers and officers from liability to serve on juries.

Court of Requests in India.

148-151. [These sections, relating to the above subject, were repealed in 1898 and 1896.]

Legal Penalties in Matters respecting Forces.

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152. Any person who falsely represents himself to any military, naval, or civil authority to be a deserter from His Majesty's regular forces, shall on summary conviction be sentenced to be imprisoned, with or without hard labour, for any period not exceeding three months.

ss. 152-154. Punishment for pretending to be a deserter.

NOTE.

1. *His Majesty's regular forces.* See definition in s. 190 (8).
2. *On summary conviction.* See note to s. 98.

153. Any person who in the United Kingdom or elsewhere by any means whatsoever—

Punishment for inducing soldiers to desert.

- (1.) Procures or persuades any soldier to desert, or attempts to procure or persuade any soldier to desert; or
- (2.) Knowing that a soldier is about to desert, aids or assists him in deserting; or
- (3.) Knowing any soldier to be a deserter, conceals such soldier, or aids or assists him in concealing himself, or aids or assists in his rescue,

shall be liable on summary conviction to be imprisoned, with or without hard labour, for a term not exceeding six months.

NOTE.

1. Para. (1) If this offence is committed by a person subject to military law, it can be dealt with under s. 12 (1) (b).
2. *On summary conviction.* See note to s. 98.

154. With respect to deserters the following provisions shall have effect:

Apprehension of deserters.

- (1.) Upon reasonable suspicion that a person is a deserter, it shall be lawful for any constable, or if no constable can be immediately met with, then for any officer or soldier or other person, to apprehend such suspected person, and forthwith to bring him before a court of summary jurisdiction:
- (2.) A justice of the peace, magistrate, or other person having authority to issue a warrant for the apprehension of a person charged with crime may, if satisfied by evidence on oath that a deserter is or is reasonably suspected to be within his jurisdiction, issue a warrant authorising such deserter to be apprehended and brought forthwith before a court of summary jurisdiction:
- (3.) Where a person is brought before a court of summary jurisdiction charged with being a deserter under this Act, such court may deal with the case in like manner as if such person were brought before the court charged with an indictable offence or in Scotland an offence:
- (4.) The court, if satisfied either by evidence on oath or by the

(M.L.)

2 x 2

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s. 154.

confession of such person that he is a deserter shall forthwith, as it may seem to the court most expedient with regard to his safe custody, cause him either to be delivered into military custody, in such manner as the court may deem most expedient, or, until he can be so delivered, to be committed to some prison, police station, or other place legally provided for the confinement of persons in custody, for such reasonable time as appears to the court reasonably necessary for the purpose of delivering him into military custody :

- (5.) Where the person confessed himself to be a deserter, and evidence of the truth or falsehood of such confession is not then forthcoming, the court shall remand such person for the purpose of obtaining information as to the truth or falsehood of the said confession, and for that purpose the court shall transmit, if sitting in the United Kingdom, to the Army Council or as they may direct, and if in India to the general or other officer commanding the forces in the military district or station where the court sits, and if in a colony to the general or other officer commanding the forces in that colony, a return (in this Act referred to as a descriptive return) containing such particulars and being in such form as is specified in the Fourth Schedule to this Act, or as may be from time to time directed by the Army Council :
- (6.) The court may from time to time remand the said person for a period not exceeding eight days in each instance, and not exceeding in the whole such period as appears to the court reasonably necessary for the purpose of obtaining the said information :
- (7.) Where the court causes a person either to be delivered into military custody or to be committed as a deserter, the court shall send, if in the United Kingdom to the Army Council, or as they may direct, and if in India or a colony to the general or other officer commanding as aforesaid, a descriptive return in relation to such deserter, for which the clerk of the court shall be entitled to a fee of two shillings :
- (8.) The Army Council shall direct payment of the said fee.

NOTE.

1. This section provides for the apprehension of suspected deserters by the civil power and for the delivery of deserters into military custody. It will be observed that a court of summary jurisdiction (as defined by s. 190 (35)) must be satisfied by evidence on oath or by the confession of the person apprehended, that he is a deserter before delivering him to the military authorities.

2. There is no obligation on the military authority to take over a man committed as a deserter, and in certain circumstances it is their duty not to do so. See K.R., 514-546. Part IV.
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3. For definition of India and colony, see s. 190 (21), (28).

155. Every person (except the Army Purchase Commissioners, and persons acting under their authority by virtue of the Regulation of the Forces Act, 1871) who negotiates, acts as agent for, or otherwise aids or connives at— Penalty on trafficking in commissions.

- (1.) The sale or purchase of any commission in His Majesty's regular forces ; or
- (2.) The giving or receiving of any valuable consideration in respect of any promotion in or retirement from such forces, or any employment therein ; or
- (3.) Any exchange which is made in manner not authorised by regulations made in pursuance of the Regimental Exchanges Act, 1875, and in respect of which any sum of money or other consideration is given or received,

shall be liable on conviction on indictment or information to a fine of one hundred pounds, or to imprisonment for any period not exceeding six months, and if an officer, on conviction by court-martial, to be dismissed the service.

156. (1.) Every person who—

- (a.) Buys, exchanges, takes in pawn, detains, or receives from a soldier, or any person acting on his behalf, on any pretence whatsoever ; or
- (b.) Solicits or entices any soldier to sell, exchange, pawn, or give away ; or
- (c.) Assists or acts for a soldier in selling, exchanging, pawning, or making away with,

Penalty on purchasing from soldiers regimental necessaries, equipments, stores, &c.

any of the property following ; namely, any arms, ammunition, equipments, instruments, regimental necessaries, or clothing, or any military decorations of an officer or soldier, or any furniture bedding, blankets, sheets, utensils and stores in regimental charge, or any provisions or forage issued for the use of an officer or soldier or his horse, or of any horse employed in His Majesty's service, shall, unless he proves either that he acted in ignorance of the same being such property as aforesaid, or of the person with whom he dealt being or acting for a soldier, or that the same was sold by order of the Army Council or some competent military authority, be liable on summary conviction, in the case of the first offence, to a fine not exceeding twenty pounds, together with treble the value of any property of which such offender has become possessed by means of his offence ; and in the case of a second offence, to a fine not less than five pounds and not exceeding twenty pounds, together

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s. 156. become possessed by means of his offence, or to imprisonment, with or without hard labour, for a term not exceeding six months.

(2.) Where any such property as above in this section mentioned is found in the possession or keeping of any person, such person may be taken or summoned before a court of summary jurisdiction, and if such court have reasonable ground to believe that the property so found was stolen, or was bought, exchanged, taken in pawn, obtained or received in contravention of this section, then if such person does not satisfy the court that he came by the property so found lawfully and without any contravention of this Act, he shall be liable on summary conviction to a penalty not exceeding five pounds.

(3.) A person charged with an offence against this section, and the wife or husband of such person, may, if he or she think fit, be sworn and examined as an ordinary witness in the case.

(4.) A person found committing an offence against this section may be apprehended without warrant, and taken, together with the property which is the subject of the offence, before a court of summary jurisdiction; and any person to whom any such property as above mentioned is offered to be sold, pawned, or delivered, who has reasonable cause to suppose that the same is offered in contravention of this section, may, and if he has the power shall, apprehend the person offering such property, and forthwith take him, together with such property, before a court of summary jurisdiction.

(5.) A court of summary jurisdiction, if satisfied on oath that there is reasonable cause to suspect that any person has in his possession, or on his premises, any property on or with respect to which any offence in this section mentioned has been committed, may grant a warrant to search for such property, as in the case of stolen goods: and any property found on such search shall be seized by the officer charged with the execution of such warrant, who shall bring the person in whose possession the same is found before some court of summary jurisdiction, to be dealt with according to law.

(6.) For the purposes of this section property shall be deemed to be in the possession or keeping of a person if he knowingly has it in the actual possession or keeping of any other person, or in any house, building, lodging, apartment, field, or place, open or inclosed, whether occupied by himself or not, and whether the same is so had for his own use or benefit, or for the use or benefit of another.

(7.) Articles which are public stores within the meaning of the Public Stores Act, 1875, and are not included in the foregoing description, shall not be deemed to be stores issued as regimental necessities or otherwise within the meaning of section thirteen of that Act.

(8.) It shall be lawful for the Governor-General of India or for the legislature of any colony, on the recommendation of the Governor thereof, but not otherwise, by any law or ordinance to reduce a minimum fine under this section to such amount as may to such Governor-General or legislature appear to be better adapted to the pecuniary means of the inhabitants.

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(9.) Every person who receives, detains, or has in his possession the identity certificate or life certificate of a person entitled to a military pension or to reserve pay or to any bounty as a pledge or security for a debt, or with a view to obtain payment from the pensioner or person entitled to the pay or bounty of a debt due either to himself or to any other person, shall be liable on summary conviction to the like penalty as for an offence under sub-section one of this section, and the certificate shall be deemed to be property within the meaning of this section.

NOTE.

1. This section applies to natives of India and to the arms, &c., of Indian soldiers.

2. Subs. (2). It was held in *Laws v. Read* (68 L.J. Q.B. 683), that the arrest, without warrant, of a person found in possession of stores was lawful, even though the person was charged and convicted of purchasing the stores from a soldier under subs. (1), and that an action for false imprisonment in such a case would not lie.

3. Subs. (8). This sub-section is virtually repealed by the Criminal Evidence Act, 1898, which enables persons charged with offences, and the wives or husbands of such persons, to give evidence subject to certain conditions, and supersedes all existing enactments authorising such persons to give evidence. See R.P. 80, and note. It is, however, to be observed that in the recent case of *The Director of Public Prosecutions v. Blady* (L.R. (1912) 2 K.B. 89) it was held that the wife or husband of an accused person, though competent, was not a compellable witness for the prosecution.

4. For definition of India, colony, court of summary jurisdiction, and horse, see ss. 190 (21), (23), (35), (40).

5. Subs. (9). This applies to any non-training bounty certificates which may be held by reservists.

Jurisdiction.

157. Where a person subject to military law has been acquitted or convicted of an offence by a court-martial, he shall not be liable to be tried again by a court-martial in respect of that offence.

Person not
to be tried
twice.

NOTE.

1. Where a court is illegally constituted—as, for example, if convened by an officer not authorised to convene it, or if composed of too few members—it is no court at all, and therefore the accused will not really have been tried, and may be tried again.

2. So also, a finding of conviction if not confirmed is of no validity (s. 54 (6)), and the accused therefore in such a case has not been convicted, and can be tried again. See Ch. V, para. 5. On the other hand, where proceedings are confirmed and subsequently quashed by superior authority, the accused is not subject to re-trial.

Part IV. 3. The principle of law is that a man shall not be tried twice in respect of the same offence. It has been laid down that the test question is—Would the evidence produced on the second trial have sufficed to support a conviction on the first. If so, the second trial is illegal and void.

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4. Where a man is retried on the same charges, it is not usual to impose a more severe punishment than that awarded on the first trial, and a confirming officer should exercise his power of remission when confirming the proceedings, if a greater punishment has been awarded on the second trial.

5. Where on the second trial the charge is for a different offence or the particulars refer to a different set of facts, the second trial is valid, but an offence of which under s. 56 the man could have been convicted on the first trial is not a different offence.

6. Where a new trial is ordered, no officer should serve on it who sat on the former court.

Liability to
military
law in
respect of
status.

158. (1.) Where an offence under this Act has been committed by any person while subject to military law, such person may be taken into and kept in military custody, and tried and punished for such offence, although he, or the corps or battalion to which he belongs, has ceased to be subject to military law, in like manner as he might have been taken into and kept in military custody, tried or punished, if he or such corps or battalion had continued so subject :

Provided that where a person has since the commission of an offence ceased to be subject to military law, he shall not be tried for such offence, except in the case of the offence of mutiny, desertion, or fraudulent enlistment unless his trial commences within three months after he has ceased to be subject to military law ; but this section shall not affect the jurisdiction of a civil court in the case of any offence triable by such court as well as by court-martial.

(2.) Where a person subject to military law is sentenced by court-martial to penal servitude, imprisonment, or detention, this Act shall apply to him during the term of his sentence, notwithstanding that he is discharged or dismissed from His Majesty's service, or has otherwise ceased to be subject to military law, and he may be kept, removed, imprisoned, made to undergo detention, and punished accordingly as if he continued to be subject to military law.

NOTE.

1. This section arises out of the difference between the status of a soldier and the status of a civilian. A soldier, using the term in its larger sense, repeatedly changes his status from soldier to civilian and from civilian to soldier. In the regular forces this change takes place when a soldier is transferred to the reserve, when he comes back from the reserve to the army on being called out for permanent service or for training, and again when he returns to civil life on being released from service or at the end of his training. A special reservist, as a general rule, is for a short time only in every year under military law, and returns again to his civil status in the same year. Members of the Territorial Force, again, are constantly changing their status, as they are subject to military law only in the circumstances stated in s. 176 (6A).

2. This section provides that if a person while subject to military law commits a military offence, he may be punished for that offence, though he may have changed his status before he is tried, but he can be tried only within three months after the military status ceases. An exception is made with respect to mutiny, desertion, and fraudulent enlistment; these offences may be tried at any time after they have been committed, subject to the restrictions in s. 161. Further exceptions are made by the Reserve Forces Act, 1882, s. 26 (2). See also as to the Territorial Force, T.R.F. Act s. 25 (2).

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3. The section further enacts that a sentence for a military offence shall not be affected by the offender being discharged or dismissed, or otherwise ceasing to be subject to military law.

159. Any person subject to military law who within or without His Majesty's dominions commits any offence for which he is liable to be tried by court-martial, may be tried and punished for such offence at any place (either within or without His Majesty's dominions) which is within the jurisdiction of an officer authorised to convene general courts-martial, and in which the offender may for the time being be, in the same manner as if the offence had been committed where the trial by court-martial takes place, and the offender were under the command of the officer convening such court-martial.

Liability to military law in respect of place of commission of offence.

160. No person shall be subject to any punishment or penalties under the provisions of this Act other than those which could have been inflicted if he had been tried in the place where the offence was committed.

Punishment not increased by trial elsewhere than offence committed.

161. A person shall not in pursuance of this Act be tried or punished for any offence triable by court-martial committed more than three years before the date at which his trial begins, except in the case of the offence of mutiny, desertion, or fraudulent enlistment; but this section shall not affect the jurisdiction of a civil court in the case of any offence triable by such court, as well as by court-martial; and where a soldier has served continuously in an exemplary manner for not less than three years in any corps of His Majesty's regular forces, he shall not be tried for any such offence of desertion (other than desertion on active service), or of fraudulent enlistment, as was committed before the commencement of such three years, but where such offence was fraudulent enlistment, all service prior to such enlistment shall be forfeited.

Liability to military law in respect of time for trial of offences.

Provided that the Army Council may restore all or any part of the service forfeited under this section to any soldier who may perform good or faithful service, or may otherwise be deemed by the Army Council to merit such restoration of service.

NOTE.

1. The effect of this section is that on the expiration of three years from the commission of an offence, the offender is free from being tried or punished under this Act by court-martial, or by his commanding officer, for any offence except mutiny, desertion or fraudulent enlistment. Mutiny may be tried at any time. With regard to desertion and fraudulent enlistment it is

Part IV. provided that except in the case of one of the greatest of all military offences—desertion on active service—he is not to be tried for the offence if he has served continuously in an exemplary manner for three years in a corps of the regular forces. In the case of fraudulent enlistment, inasmuch as he has chosen to quit his old corps and enter into a new contract to serve for a further term of years, he will be held to serve according to that contract and will not reckon any of his prior service; unless the Army Council, under the power given by the proviso to the section restores the whole or some part of the forfeited service in consideration of good or faithful service or some other meritorious conduct.

2. *In an exemplary manner.* This means that the man has had no entry in the regimental conduct sheet for a continuous period of three years; K.R., 489.

3. *Active service.* For definition, see s. 189.

Adjustment
of military
and civil
law.

162. (1.) If a person sentenced by a court-martial in pursuance of this Act to punishment for an offence is afterwards tried by a civil court for the same offence that court shall, in awarding punishment, have regard to the military punishment he may already have undergone.

(2.) Save as aforesaid, nothing in this Act shall exempt an officer or soldier from being proceeded against by the ordinary course of law, when accused or convicted of any offence, except such an offence as is declared not to be a crime for the purpose of the provisions of this Act relating to taking a soldier out of His Majesty's service.

(3.) If an officer—

(a.) Neglects or refuses on application to deliver over to the civil magistrate any officer or soldier under his command who is so accused or convicted as aforesaid; or

(b.) Wilfully obstructs or neglects or refuses to assist constables or other ministers of justice in apprehending any such officer or soldier,

such commanding officer shall, on conviction in any of His Majesty's superior courts in the United Kingdom, or in a supreme court in India, be guilty of a misdemeanor.

(4.) A certificate of a conviction of an officer under this section, with the judgment of the court thereon, in such form as may be directed by the Army Council, shall be transmitted to the Army Council.

(5.) Any offence committed by any such commanding officer out of the United Kingdom shall, for the purpose of the apprehension, trial, and punishment of the offender, be deemed to have been committed within the jurisdiction of His Majesty's High Court of Justice in England; and such court shall have jurisdiction as if the place where the offence was committed or the offender may for the time being be were in England.

(6.) Where a person subject to military law has been acquitted or convicted of an offence by a competent civil court, he shall not be liable to be tried in respect of that offence under this Act.

NOTE.

1. This section, in effect, declares that a person subject to military law is not to be exempted from the civil law by reason of his military status, so that a person acquitted or convicted of an offence by a court-martial may still be tried by a civil court for the same offence, as being an offence against the civil law. Subs. (1), however, provides that a civil court in awarding punishment for an offence, shall have regard to any military punishment which the accused may already have undergone; while subs. (6) further declares that where a person subject to military law has been acquitted or convicted of an offence by a competent civil court, he shall not be tried under military law for that offence.

2. As to subs. (2), see s. 144.

3. Subs. (5). See also s. 170 (8).

4. Subs. (6). If a N.C.O. is convicted by a civil court, the case is to be reported to an officer not below the rank of brigadier-general so that he may consider whether it is desirable to recommend the reduction of the offender; K.R., 506.

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Evidence.

163. (1.) The following enactments shall be made with respect to evidence in proceedings under this Act, whether before a civil court or a court-martial; that is to say, Regulations
as to
evidence.

(a.) The attestation paper purporting to be signed by a person on his being attested as a soldier, or the declaration purporting to be made by any person upon his re-engagement in any of His Majesty's regular forces, or upon any enrolment in any branch of His Majesty's service, shall be evidence of such person having given the answers to questions which he is therein represented as having given:

The enlistment of a person in His Majesty's service may be proved by the production of a copy of his attestation paper purporting to be certified to be a true copy by the officer having the custody of the attestation paper without proof of the handwriting of such officer, or of his having the custody of the paper:

(b.) A letter, return, or other document respecting the service of any person in or the discharge of any person from any portion of His Majesty's forces, or respecting a person not having served in or belonged to any portion of His Majesty's forces, if purporting to be signed by or on behalf of a Secretary of State, or the Army Council or of the Commissioners of the Admiralty, or by the commanding officer of any portion of His Majesty's forces, or of any of His Majesty's ships, to which such person appears to have belonged, or alleges that he belongs or had belonged, shall be evidence of the facts stated in such letter, return, or other document:

(c.) Copies purporting to be printed by a Government printer of King's Regulations, or regulations referred to in section

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one hundred and forty-two of this Act, of royal warrants, of army circulars or orders, and of rules made by His Majesty, or a Secretary of State, or the Army Council, in pursuance of this Act, shall be evidence of such regulations, royal warrants, army circulars or orders, and rules :

- (d.) An army list or gazette purporting to be published by authority, and either to be printed by a Government printer, or to be issued, if in the United Kingdom, by His Majesty's Stationery Office, and if in India, by some office under the Governor-General of India or the Governor of any Presidency in India, shall be evidence of the status and rank of the officers therein mentioned, and of any appointment held by such officers, and of the corps or battalion or arm or branch of the service to which such officers belong :
- (e.) Any warrants or orders made in pursuance of this Act by any military authority shall be deemed to be evidence of the matters and things therein directed to be stated by or in pursuance of this Act, and any copies of such warrants or orders purporting to be certified to be true copies by the officer therein alleged to be authorised by a Secretary of State or the Army Council to certify the same shall be admissible in evidence.

* * * * *

[Paragraph (f) is repealed by the Reserve Forces Act, 1882, but see s. 24 (2) of that Act.]

- (g.) Where a record is made in one of the regimental books in pursuance of any Act or of the King's Regulations, or otherwise in pursuance of military duty, and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts thereby stated :
- (h.) A copy of any record in one of the said regimental books purporting to be certified to be a true copy by the officer having the custody of such book shall be evidence of such record :
- (i.) A descriptive return within the meaning of this Act, purporting to be signed by a justice of the peace shall be evidence of the matters therein stated.
- (j.) Where the proceedings are proceedings against a soldier on a charge of being a deserter or absentee without leave, and the soldier has surrendered himself into the custody of any portion of His Majesty's Forces, a certificate purporting to have been signed by the commanding officer of that portion of His Majesty's Forces and stating the fact, date, and place of such surrender shall be evidence of the matters so stated.

(2) For the purposes of this Act the expression "Government printer" means any printer to His Majesty, and in India any Government press.

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NOTE.

1. See generally as to evidence of documents, Ch. VI, paras. 30-40; and as to the application of this section to proceedings under the T.R.F. Act and the Reserve Forces Act, 1882, see s. 26 (2) of the former and s. 27 (2) of the latter Act.

2. This section provides for the admissibility in evidence of a variety of documents or copies of documents used in the administration of military law, but does not make them conclusive evidence; therefore evidence may be given to contradict them.

3. In the case of such a document, for instance, as a letter respecting the service of a man, great caution is required as regards the identity of the accused with the person named in the document; and if the accused denies that the facts stated in any such document apply to him, independent evidence of identity must be obtained; see R.P. 46 (B) and note.

4. Documents made evidence by this section except those mentioned in subs. (1) (c) and (d) can only be received as such when produced by a witness on oath.

5. *Purporting.* This expression means that if the paper appears to be certified or to be signed as mentioned in the paragraph, it can be accepted without calling a witness to prove that it has been so certified, signed, &c., unless indeed some evidence is given to the contrary. If any evidence is produced casting a doubt on the authenticity of a document, the court should require evidence of the certificate or signature, &c. to be given by a witness.

6. Para. (c.) Since 1st January, 1888, the regulations formerly notified in Army circulars have been promulgated together with General Orders under the title of Army Orders.

7. Para. (g.) For the purpose of this paragraph it is important that the records in the regimental books should be signed by the proper officer, namely, the officer required by this Act, by the King's Regulations, or by his military duty, to make the record. A record not in the regimental books is not made evidence.

8. Para. (j). This paragraph was added by A.A.A. 1912

164. Whenever any person subject to military law has been tried by any civil court, the clerk of such court, or his deputy, or other officer having the custody of the records of such court, shall, if required by the commanding officer of such person, or by any other officer, transmit to him a certificate setting forth the offence for which the person was tried, together with the judgment or order of the court thereon, or, if he was acquitted, the acquittal, and shall be allowed for such certificate a fee of three shillings. Any such certificate shall be sufficient evidence of the conviction and sentence, or of the order of the court, or of the acquittal of the prisoner, as the case may be.

Evidence of
civil conviction
or
acquittal.

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1. The object of this section is to facilitate the proof of a conviction or acquittal by a civil court.

2. In England and Wales, under Rule 13 of the Criminal Appeal Rules, 1908, a certificate of conviction cannot issue under this section in the case of any person convicted on indictment, until ten days after the date of conviction, and where the person convicted appeals against the conviction or applies for leave to appeal not until the appeal or application has been determined. A person applying for a certificate of conviction is therefore required to satisfy the clerk of the court to whom the application is made that no appeal is pending, and this may be done by forwarding to the clerk a certificate to that effect, which can be obtained by applying to the Registrar of the Court of Criminal Appeal, Royal Courts of Justice, London, W.C.

3. Alterations were made in this section by A.A.A. 1913, with a view to meeting the case where there is neither a conviction nor an acquittal; e.g. where a probation order is made.

Evidence of
conviction
by court-
martial.

165. The original proceedings of a court-martial, purporting to be signed by the president thereof and being in the custody of the Judge Advocate-General, or of the officer having the lawful custody thereof, shall be deemed to be of such a public nature as to be admissible in evidence on their mere production from such custody; and any copy purporting to be certified by such Judge Advocate-General or his deputy authorised in that behalf or by the officer having such custody as aforesaid, to be a true copy of such proceedings or of any part thereof, shall be admissible in evidence without proof of the signature of such Judge Advocate-General, deputy, or officer; and a Secretary of State, upon production of any such proceedings or certified copy, may, by warrant under his hand, authorise the offender appearing therefrom to have been convicted and sentenced to any punishment, to be imprisoned and otherwise dealt with in accordance with the sentence in the proceedings or certified copy mentioned.

NOTE.

1. This section facilitates the proof of transactions of courts-martial, by declaring that the proceedings or certified copies thereof shall be admissible in evidence. It is to be observed, however, that, for the purposes of proving a previous conviction, in addition to the production of the proceedings evidence must be available to show the identity of the person mentioned in the proceedings with the person charged.

2. *Purporting.* See note 5 to s. 163.

3. *Shall be deemed to be of such a public nature, &c.* See 14 & 15 Vict. c. 99, s. 14, which makes a certificate of the document by the officer having the custody of it admissible in evidence, and requires the officer to furnish certified copies upon payment of not more than 4d. for every folio of 90 words, and enacts a punishment for false copies, and for the forgery of the officer's signature or seal.

4. *A Secretary of State, by warrant under his hand.* The object of this is to avoid such difficulties as arose in Lieutenant Allen's case (see Oh. VIII., paras. 35-37), where there is no doubt that an officer or soldier convicted abroad has been properly convicted, but no proper warrant has been sent home authorising his retention in custody; see s. 172 (4) and note.

Summary and other Legal Proceedings.

Part IV.

s. 100.

Prosecution of offences and recovery and application of fines.

100. (1.) A court of summary jurisdiction having jurisdiction in the place where the offence was committed, or in the place where the offender may for the time being be, shall have jurisdiction over all offences triable in a civil court under this Act, except any such offence as is declared by this Act to be a misdemeanor, or to be punishable on indictment; and any offence within the jurisdiction of a court of summary jurisdiction may be prosecuted, and the fine and forfeiture in respect thereof may be recovered on summary conviction, in manner provided by the Summary Jurisdiction Acts.

(2.) Any proceedings taken before a court of summary jurisdiction in pursuance of this Act shall be taken in accordance with the Summary Jurisdiction Acts so far as applicable.

(3.) A court of summary jurisdiction imposing a fine in pursuance of this Act may, if it seem fit, order a portion of such fine not exceeding one-half to be paid to the informer.

(4.) Where the maximum fine or imprisonment which a court of summary jurisdiction in England, when sitting in an occasional courthouse, is authorised by law to impose is less than the minimum fine or imprisonment fixed by this Act, the court may impose the maximum fine or imprisonment which such court is authorised by law to impose, but if required by either party, shall adjourn the case to the next practicable petty sessional court.

(5.) The court of summary jurisdiction in Ireland, when hearing and determining a case arising under this Act, shall be constituted either of two or more justices of the peace sitting at some court or public place at which justices are for the time being accustomed to assemble for the purpose of holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the public administration of justice and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

(6.) Subject to the provisions of this Act with regard to the payment to the informer, fines and other sums recovered before a court of summary jurisdiction in pursuance of this Act shall, notwithstanding anything contained in any other Act, if recovered in England, be paid into the Exchequer, and if recovered in Ireland, shall be applied in manner directed by the Fines Act (Ireland), 1851, and any Acts amending the same.

14 & 15 Vict.
c. 90.

NOTE.

Subs. (4). Under the Summary Jurisdiction Acts, two justices, if not sitting in a petty sessional courthouse, have only limited powers of fine and imprisonment; and such powers do not extend to imposing the minimum fine or imprisonment fixed in some cases by this Act. In such a case they may, under this subsection, impose the maximum fine or imprisonment which they can impose in ordinary cases, i.e., 20s. or 14 days (42 & 43 Vict. c. 49, s. 20 (7)).

Part IV.

ss.

167-168.

Summary
proceedings
in Scotland.

167. (1.) In Scotland, offences and fines which may be prosecuted and recovered on summary conviction may be prosecuted and recovered, and proceedings under this Act may be taken at the instance of the procurator fiscal of the court, or of any person in that behalf authorised by the Army Council, or of any person authorised by this Act to complain.

(2.) All fines under this Act in default of payment, and all orders made under this Act failing compliance, may be enforced by imprisonment for a term to be specified in the order or conviction, but not exceeding three months, and the conviction and warrant may be in the form number three of Schedule K of the Summary Procedure Act, 1864.

27 & 28 Vict.
c. 53.

(3.) All fines and other sums recovered under this Act before a court of summary jurisdiction, subject to any payment made to the informer, shall be paid to the King's and Lord Treasurer's Remembrancer, on behalf of His Majesty.

(4.) It shall be no objection to the competency of a person to give evidence as a witness in any prosecution for offences under this Act, that such prosecution is brought at the instance of such person.

(5.) Every person convicted of an offence under this Act shall be liable in the reasonable costs and charges of such conviction.

(6.) All jurisdictions, powers, and authorities necessary for the purposes of this Act are conferred on the sheriffs and their substitutes and on justices of the peace.

(7.) The court may make, and may also from time to time alter or vary, summary orders under this Act on petition by the procurator fiscal of the court, or such person as aforesaid, presented in common form.

NOTE.

Subs. (2). The Summary Procedure Act, 1864, was repealed by the Summary Jurisdiction (Scotland) Act, 1908, 8 Edw. 7 c. 65. and the form of conviction will now be in accordance with the provisions of that Act; see s. 53 thereof.

Summary
proceedings
in Isle of
Man, Chan-
nel Islands,
India, and
the colonies.

168. All offences under this Act which may be prosecuted, and all fines under this Act which may be recovered on summary conviction, and all proceedings under this Act which may be taken before a court of summary jurisdiction, may be prosecuted and recovered and taken in the Isle of Man, Channel Islands, India, and any colony in such courts and in such manner as may be from time to time provided therein by law, or if no express provision is made, then in and before the courts and in the manner in which the like offences and fines may be prosecuted and recovered and proceedings taken therein by law, or as near thereto as circumstances admit.

NOTE.

Part IV.

For definitions of India and colony see s. 190 (21), (28).

ss.

168-170.

169. It shall be lawful for the Governor-General of India, and for the legislature of any colony, to provide by law for reducing any fine directed by this Act to be recovered on summary conviction to such amount as may appear to the Governor-General or legislature to be better adapted to the pecuniary means of the inhabitants, and also to declare the amount of the local currency which is to be deemed for the purposes of this Act to be equivalent to any sum of British currency mentioned in this Act.

Power of Governor-General of India and legislature of colony as to fines.

170. (1.) Any action, prosecution, or proceeding against any person for any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act, shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or in case of a continuance of injury or damage, within six months next after the ceasing thereof.

Protection of persons acting under Act.

(2.) In any such action tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after such tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after such tender or payment, and the defendants shall be entitled to costs, to be taxed as between solicitor and client as from the time of such tender or payment; but this provision shall not affect costs on any injunction in the action.

(3.) Every such action and also every action against a member or minister of a court-martial in respect of a sentence of such court, or of anything done by virtue or in pursuance of such sentence, shall be brought in one of His Majesty's superior courts in the United Kingdom (which courts shall have jurisdiction to try the same wherever the matter complained of occurred) or in a supreme court in India, or in any colonial court of superior jurisdiction, provided the matter complained of occurred within the jurisdiction of such Indian or Colonial court respectively, and in no other court whatsoever.

NOTE.

1. With respect to actions for damages and other proceedings against officers acting without jurisdiction or in excess of their jurisdiction, see Ch. VIII, para. 40. This section prevents any such action or other proceeding being instituted after the expiration of six months from the date of the act or default complained of.

2. Actions can be brought in courts at home in respect of acts done abroad. See Ch. VIII, paras. 56, 57.

3. See note to para. 99 of Ch. VIII as to the modifications introduced into this section by the Public Authorities Protection Act, 1888 (56 & 57 Vict. c. 61).

(M. L.)

2 C

Part IV.

Miscellaneous.

ss.
171-172.
Exercise of
powers
vested in
holder of
military
office.

171. Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service, or according to rules made under section seventy of this Act.

NOTE.

The object of this section is to prevent any legal difficulties arising from the usage of the army relating to the delegation of authority by one officer to another. For instance, a report which is directed by this Act to be made to a general officer or to an officer having power to convene or confirm courts-martial may be addressed to the staff officer, adjutant, or other person to whom such reports are usually addressed. See also R.P. 131.

Provisions
as to war-
rants and
orders of
military
authorities.

172. (1.) Where any order is authorised by this Act to be made by the Army Council, or by the Commander-in-Chief or Adjutant-General of the forces in India, or by any general or other officer commanding, such order may be signified by an order, instruction, or letter under the hand of any officer authorised to issue orders on behalf of the Army Council or such Commander-in-Chief, Adjutant-General, or general or other officer commanding, and an order, instruction, or letter purporting to be signed by any officer appearing therein to be so authorised shall be evidence of his being so authorised.

(2.) The foregoing enactment of this section shall extend to any order or directions issued in pursuance of this Act in relation to a military convict or military prisoner or soldier undergoing detention, and any such order or directions shall not be held void by reason of the death or removal from office of the officer signing or ordering the issue of the same, or by reason of any defect in such order or directions, if it be alleged in such order or directions that the convict, or prisoner, or soldier has been convicted, and there is a good and valid conviction to sustain the order or directions.

(3.) An order in any case if issued in the prescribed form shall be valid, but an order deviating from the prescribed form if otherwise valid shall not be rendered invalid by reason only of such deviation.

(4.) Where any military convict, or military prisoner, or soldier undergoing detention, is for the time being in custody, whether military or civil, in any place or manner in which he might legally be kept in pursuance of this Act, the custody of such convict, or prisoner, or soldier, shall not be deemed to be illegal only by reason of any informality or error in or as respects the order, warrant, or other document, or the authority by or in pursuance whereof such convict, or prisoner, or soldier was brought into or is detained in such custody, and any such order, warrant, or document may be amended accordingly.

(5.) Where a military convict, or a military prisoner, or a soldier undergoing detention, or a person who is subject to military law and charged with an offence, is a prisoner or soldier in military custody, and for the purpose of conveyance by sea is delivered on board a ship to the person in command of the ship or to any other person on board the ship acting under the authority of the commander, the order of the military authority which authorises the prisoner or soldier to be conveyed by sea shall be a sufficient authority to such person, and to the person for the time being in command of the ship, to keep the said prisoner or soldier in custody and convey him in accordance with the order, and the prisoner or soldier while so kept shall be deemed to be kept in military custody.

Part IV.
—
ss.
172-174.

NOTE.

1. Subs. (1). The object of this sub-section is similar to that of s. 171. It will allow orders of a general or other officer to be signed by the staff officer or adjutant as authorised by the custom of the service, but the confirmation of courts-martial, and warrants or other documents relating to imprisonment or detention or the infliction of any other punishment must be signed by the officer himself.

2. Subs. (2) and (3) are introduced with a view to prevent military proceedings from being rendered void by merely technical objections.

3. Subs. (3). *Prescribed.* See R.P. 133.

4. Subs. (4). This sub-section is introduced for the same object as subs. (2) and (3). These sub-sections would probably not meet a case where the order, warrant, or document is issued by a person having no authority to issue it. In such a case it will be advisable to procure a warrant from a Secretary of State under s. 165.

173. If any soldier on furlough is detained by sickness or other casualty rendering necessary any extension of such furlough in any place, and there is not any officer in the performance of military duty of the rank of captain, or of higher rank, within convenient distance of the place, any justice of the peace who is satisfied of such necessity may grant an extension of furlough for a period not exceeding one month; and the said justice shall by letter immediately certify such extension and the cause thereof to the commanding officer of such soldier if known, and if not, then to the Army Council. The soldier may be recalled to duty by his commanding officer or other competent military authority, and the furlough shall not be deemed to be extended after such recall; but, save as aforesaid, the soldier shall not in respect of the period of such extension of furlough be liable to be treated as a deserter or as absent without leave.

Furlough
in case of
sickness.

NOTE.

A soldier who makes a false statement to an officer or justice in respect of extension of his furlough may be tried and punished by court-martial: s. 27 (4).

174. (1.) When a person holds a canteen under the authority of a Secretary of State or the Admiralty, it shall be lawful for

Licencees of
canteen.

(M.L.)

2 L 2

Part IV. any two justices within their respective jurisdictions to grant transfer, or renew any licence for the time being required to enable such person to obtain or hold any excise licence for the sale of any intoxicating liquor, without regard to the time of year, and without regard to the requirements as to notices, certificates, or otherwise, of any Acts for the time being in force affecting such licences; and excise licences may be granted to such person accordingly.

(2.) For the purposes of this section the expression licence includes any licence or certificate for the time being required by law to be granted, renewed, or transferred by any justices of the peace, in order to enable any person to obtain or hold any excise licence for the sale of any intoxicating liquor.

NOTE.

This section now applies only as regards Ireland, having been repealed as regards England in 1902, and as regards Scotland in 1903. Under the provisions of s. 111 (2) (1) of the Licensing (Consolidation) Act, 1910, and s. 50 of the Licensing (Scotland) Act, 1903, excise licences for military canteens may be granted in England and Scotland without a justice's licence or certificate to any persons holding canteens under the authority of a Secretary of State.

Use of
recreation
rooms
without
licence.

25 Geo. 2,
c. 38.
6 & 7 Vict.
c. 68.

174A. Notwithstanding anything in the Disorderly Houses Act, 1751, or in the Theatres Act, 1843, where a recreation room is managed or conducted under the authority of a Secretary of State or the Admiralty, it may be used for public dancing, music, or other public entertainment of the like kind or for the public performance of stage plays, without any licence in pursuance of those Acts, or either of them.

Part V.

PART V.

APPLICATION OF MILITARY LAW, SAVING PROVISIONS, AND DEFINITIONS.

Introductory Note as to Application of Military Law.

Application
of military
law.
Persons
subject to
military law
as officers.

Persons subject to military law are divided by this part of the Act into (1) persons so subject as officers and (2) persons so subject as soldiers.

The expression "officer" is defined in s. 190 (4) as meaning an officer commissioned or in pay as an officer in His Majesty's forces, or any arm, branch, or part thereof, and as also including—

(a.) A person who, by virtue of his commission, is appointed to any department or corps of His Majesty's forces, or of any arm, branch, or part thereof; and

(b.) A person, whether retired or not, who, by virtue of his commission or otherwise, is legally entitled to the style and rank of an officer of His Majesty's forces, or of any arm, branch, or part thereof.

Warrant and other officers holding honorary commissions are included in the definition of officer. Part V.

Every officer, as so defined, is not necessarily subject to military law. The persons subject to military law as officers are:— s. 175.

- (1.) Officers of the regular forces on the active list, and officers of the regular forces not on the active list if employed on military service under an officer of the regular forces, s. 175 (1).

The meaning of the "active list" must be ascertained by reference to the Pay Warrant. Under the warrant now in force service on the active list includes full-pay service and half-pay service, and full-pay service includes—

- (a.) Service with a regiment or on the staff;
- (b.) Service while seconded; and
- (c.) Service while on the temporary reserve list of the Royal Engineers.

Under the above warrant "half-pay" applies only to officers who are on the half-pay list in anticipation of future employment in service on the active list. Officers who have retired from the half-pay list are no longer included under the expression "half-pay officers," and the pay they receive is termed "retired pay."

The expression "regular forces" means the British and Indian forces, the Royal Marines, the Reserves (including the Special Reserve) when called out on permanent service, and forces raised in a Colony by direct order of His Majesty, such as the Royal Malta Artillery, West India Regiment, West African Regiment. Certain modifications of the Act, in its application to the Royal Marines and Indian Forces, are contained in ss. 179 and 180.

- (2.) Officers of the Territorial Force (including those of the Territorial Force Reserve), whether on the permanent staff or not (s. 175 (2) and (3A));
- (3.) Officers of forces raised out of the United Kingdom and India and serving under an officer of the regular forces (see s. 175 (4));
- (4.) Persons who under the orders of the Army Council or of the Governor General in India accompany in an official capacity any of His Majesty's troops on active service in any place, with the qualification that such a person if a native of India will be subject to Indian military law (see s. 175 (7) and note);
- (5.) Persons accompanying a force on active service and holding from the commanding officer of the force passes entitling them to be treated as officers (see s. 175 (8) and note);
- (6.) Officers belonging to the reserve of officers and the Indian Army Reserve of officers in the circumstances mentioned in paragraphs (10) and (9) respectively of s. 175 (see also the Pay Warrant);
- (7.) Officers of the Special Reserve of officers. (see s. 175 (10));
- (8.) Officers of forces raised in India or a colony when attached to or doing duty with troops in the United Kingdom in the circumstances mentioned in s. 175 (11);
- (9.) Officers of a force raised in India or a colony to which the Army Act is applied by the law of India or the Colony, &c. (s. 175 (12)).

The Act further makes provision with respect to officers of the Militia, Yeomanry, and Volunteers; but as these forces are not now raised it is unnecessary to summarize those provisions of the Act.

Part V. The persons subject to military law as soldiers are set out in s. 176 (q.v.).
s. 175. The provisions however respecting the men of the militia, militia reserve, yeomanry and volunteers, are not at present important, as these forces are not raised in the United Kingdom.

Persons subject to military law as soldiers. It is to be observed that the expression "soldier" includes warrant officers not having honorary commissions and non-commissioned officers (s. 190 (5) and (6)), subject however to the special provisions with respect to them in ss. 182 and 183.

It is further to be noted that in spite of the limitations contained in s. 176 (5) a man of the Army reserve (including the special reserve) is, in a modified way, at all times subject to military law, inasmuch as he is liable to be tried by a court martial under s. 6 of the Reserve Forces Act, 1882, for the offences mentioned in that section, which are: failure to attend at any place when required, insubordinate behaviour to superior officers, and non-compliance with the regulations for the payment or government of the force.

Persons not belonging to His Majesty's forces, subject to military law as soldiers. It will be observed that the above summary includes amongst the persons subject to military law certain civilians. When troops are on active service it is absolutely necessary for the sake of military operations and discipline that civilians who accompany them should be under the control of military officers and tribunals.

The only modification in the application of the Act to persons who do not belong to His Majesty's forces which requires notice here is that such persons cannot be punished by a commanding officer and cannot be tried by a regimental court-martial, s. 184 (2).

Trial of persons who have ceased to be subject to military law. As to the trial and punishment of a person who, or whose corps, has ceased to be subject to military law since the commission of the offence, see s. 158 and note.

Persons subject to Military Law.

Persons subject to military law as officers. 175. The persons in this section mentioned are persons subject to military law as officers, and this Act shall apply accordingly to all the persons so specified; that is to say,

- (1.) Officers of the regular forces on the active list, within the meaning of any Royal Warrant for regulating the pay and promotion of the regular forces, and officers not on such active list who are employed on military service under the orders of an officer of the regular forces who is subject to military law:
- (2.) Officers who are members of the permanent staffs of any of the auxiliary forces, and are not otherwise subject to military law:
- (3.) Officers of the militia other than members of the permanent staff:
- (3A.) Officers of the Territorial Force other than members of the permanent staff:
- (4.) All such persons not otherwise subject to military law as may be serving in the position of officers of any troops or portion of troops raised by order of His Majesty beyond the limits of the United Kingdom and of India, and serving under the command of an officer of the regular forces;

Provided that nothing in this Act shall affect the application to such persons of any Act passed by the legislature of a colony :

Part V.
s. 175

- (5.) Officers of the yeomanry, and officers of the volunteers, whenever in actual command of men who are, in pursuance of this Act, subject to military law, or when their corps is on actual military service :
- (6.) Any officer of the yeomanry or volunteers, whether in receipt of pay or otherwise, during and in respect of the time when with his own consent he is attached to or doing duty with any body of troops for the time being subject to military law, whether of the regular or auxiliary forces, or, with his own consent, is ordered on duty by the military authorities :
- (7.) Every person not otherwise subject to military law who under the general or special orders of the Army Council or of the Governor-General of India accompanies in an official capacity equivalent to that of officer any of His Majesty's troops on active service in any place, subject to this qualification, that where such person is a native of India, he shall be subject to Indian military law as an officer :
- (8.) Any person, not otherwise subject to military law accompanying a force on active service who shall hold from the commanding officer of such force a pass revocable at the pleasure of such commanding officer entitling such person to be treated on the footing of an officer :
- (9.) The persons holding commissions as officers in the Indian Army reserve when such officers are called out in any military capacity :
- (10.) Any reserve officer, within the meaning of the Royal Warrant regulating the composition of the reserve of officers, if an officer holding a commission as officer in the special reserve at all times and if not holding such a commission when he is ordered on any duty or service, for which, as reserve officer, he is liable :
- (11.) All officers belonging to a force raised in India or a colony, when attached to or doing duty with any portion of the regular reserve, or auxiliary forces in the United Kingdom :
- (12.) All officers of a force raised in India or a colony to which this Act is, in whole or in part, applied by the Law of India or the colony, at such times and subject to such adaptations, modifications, and exceptions as may be specified in such law.

Part V.

ss.

176-176.

NOTE.

1. Para. (4). This is not meant to include strictly colonial forces, but only forces raised at the Imperial expense: see Ch. XI, para. 8. See also s. 176 (3) and note. As to strictly colonial forces, see s. 177.

2. Para. (7) and (8). These paragraphs make certain persons subject to military law as officers, who would otherwise be subject under s. 176 (10) to trial and punishment as soldiers. The first extends to persons attached to a military expedition by order of the Army Council or the Governor-General of India in a diplomatic, scientific, or other official capacity. The second would apply to persons like contractors or newspaper correspondents, who obtain passes from the commanding officer of the force directing them to be treated as officers. It will be observed that an official of the Governor-General, who is a native of India, will be subject to Indian military law See s. 180 (2).

3. Para. (7) was formerly limited to persons accompanying troops on active service in any place *beyond the seas*. By A.A.A. 1912, however, the limitation to places *beyond the seas* was abolished. See s. 184 for special provisions applicable to persons made subject to military law by this paragraph.

4. Para. (10). Under this paragraph an officer of the Reserve of Officers is only subject to military law when ordered on any duty or service for which, as a reserve officer, he is liable, but by an amendment introduced in 1908, officers of the Special Reserve of Officers are made subject to military law at all times.

5. Para. (11). This paragraph was added by A.A.A., 1909.

6. Para. (12). This paragraph was added by A.A.A., 1912.

Persons
subject to
military
law as
soldiers.

176. The persons in this section mentioned are persons subject to military law as soldiers, and this Act shall apply accordingly to all the persons so specified; that is to say,

- (1.) All soldiers of the regular forces :
- (2.) All non-commissioned officers and men of the permanent staff of any of the auxiliary forces who are not otherwise subject to military law :
- (3.) All non-commissioned officers and men serving in a force raised by order of His Majesty beyond the limits of the United Kingdom and of India, and serving under the command of an officer of the regular forces :

Provided that nothing in this Act shall affect the application to such non-commissioned officers and men of any Act passed by the legislature of a colony.

- (4.) All pensioners not otherwise subject to military law who are employed in military service under the orders of an officer of the regular forces :
- (5.) All non-commissioned officers and men belonging to the army reserve force or the militia reserve force,—
 - (a.) When called out for training and exercise ; and
 - (b.) When called out for duty in aid of the civil power ; and
 - (c.) When called out on permanent service ; *** and
 - (d.) When employed in military service under the orders of an officer of the regular forces :

- (6.) All non-commissioned officers and men in the militia of **Part V.**
the United Kingdom,—

s. 176.

- (a.) During their preliminary training ; and
- (b.) When they or the body of militia to which they belong are being trained or exercised either alone or with any portion of the regular forces or otherwise ; and
- (c.) When attached to or otherwise acting as part of or with any regular forces ; and
- (d.) When embodied :

- (6A.) All non-commissioned officers and men belonging to the Territorial Force—

- (a.) When they are being trained or exercised, either alone or with any portion of the regular forces or otherwise ; and
- (b.) When attached to or otherwise acting as part of or with any regular forces ; and
- (c.) When embodied ; and
- (d.) When called out for actual military service for purposes of defence in pursuance of any agreement.

- (7.) All non-commissioned officers and men belonging to the yeomanry force of the United Kingdom,—

- (a.) When they or their corps are being trained or exercised, either alone or with any portion of regular forces or with any portion of the militia when subject to military law ; and
- (b.) When they are attached to or otherwise acting as part of or with any regular forces ; and
- (c.) When their corps is on actual military service ; and
- (d.) When serving in aid of the civil power :

- (8.) All non-commissioned officers and men belonging to the volunteer forces of the United Kingdom,—

- (a.) When they are being trained or exercised with any portion of the regular forces or with any portion of the militia when subject to military law ; and
- (b.) When they are attached to or otherwise acting as part of or with any regular forces ; and
- (c.) When their corps is on actual military service :

Provided that it shall be the duty of the commanding officer of any part of the volunteer force not in actual military service, when he knows that any non-commissioned officers or men belonging to that force are about to enter upon any service which will render them subject to military law, to provide for their being informed that they will become so subject, and for their having an opportunity of abstaining from entering on that service.

- Part V. (8A.) All non-commissioned officers and men belonging to a force raised in India or a colony when attached to or otherwise acting as part of or with any portion of the regular, reserve, or auxiliary forces in the United Kingdom.
- s. 178. (9.) All persons who are employed by or are in the service of any of His Majesty's troops when employed on active service and who are not under the former provisions of this Act subject to military law :
- (10.) All persons not otherwise subject to military law who are followers of or accompany His Majesty's troops, or any portion thereof, when employed on active service ; subject to this qualification that where any such persons are employed by or are followers of, or accompany any portion of His Majesty's forces consisting partly of His Majesty's Indian forces subject to Indian military law, and such persons are natives of India, they shall be subject to Indian military law.
- (11.) All non-commissioned officers and men belonging to a force raised in India or a colony to which this Act is, in whole or in part, applied by the law of India or the colony, at such times and subject to such adaptations, modifications, and exceptions as may be specified in such law.

NOTE.

1. Para. (2). See s. 181 (2).

Otherwise subject, &c. Soldiers of the regular forces posted to the permanent staff of the auxiliary forces would be "otherwise" (i.e. as being in the regular forces) subject to military law.

2. Para. (3). This is not intended to include strictly colonial forces, but only forces raised at the Imperial expense, whose maintenance is voted annually by Parliament. It might, however, no doubt extend to a force raised under a Colonial Act, but under the Imperial control. But strictly colonial forces are dealt with by s. 177. See further Ch. XI, para. 3.

3. Paras. (4 and 5). See s. 178. A pensioner or army reservist employed in any army establishment or department under an officer of the regular forces in the performance of duties which he is only qualified to perform in virtue of his capacity as a pensioner, or a reservist, is subject to military law. When the duties which he performs are duties which could equally be discharged by a civilian he is not so subject. There are no positions held at present by pensioners or reservists which render them subject to military law in time of peace.

4. Para. (5). As to the power to try by court-martial an Army Reserve man who on two consecutive occasions fails to comply with the regulations respecting pay, or fails to attend at an appointed place, or is insubordinate to a superior officer, or obtains pay by any fraudulent means, or fails to comply with the regulations for the government of the forces, see s. 6 of the Reserve Forces Act, 1882.

5. Para. (8A). This paragraph was added by A.A.A., 1909.

6. Paras. 9 and 10. By A.A.A., 1912, the limitation of these paragraphs to persons employed on active service *beyond the seas* was abolished.

See s. 184 for special provisions applicable to persons made subject to military law by these paras. **Part V.**

7. Para. (11). This paragraph was added by A.A.A., 1912. As to cases **ss. 176-177.** where the Army Act has been applied to forces raised in India or a colony before the Act of 1912 came into force, see s. 8 (2) of that Act.

177. Where any force of volunteers, or of militia, or any other force, is raised in India or in a colony, any law of India or the colony may extend to the officers, non-commissioned officers and men belonging to such force, whether within or without the limits of India or the colony; and any such law may apply, in relation to such force and to any officers, non-commissioned officers, and men thereof all or any of the provisions of this Act, subject to such adaptations, modifications and exceptions as may be specified in such law, and where so applied this Act shall have effect in relation to such force, subject to such adaptations, modifications and exceptions as aforesaid; and where any such force is serving with part of His Majesty's regular forces, then so far as the law of India or the colony has not provided for the government and discipline of such force, this Act and any other Act for the time being amending the same shall, subject to such exceptions and modifications as may be specified in the general orders of the general officer commanding His Majesty's forces with which such force is serving, apply to the officers, non-commissioned officers, and men of such force, in like manner as they apply to the officers, non-commissioned officers and men of the regular forces.

Persons belonging to colonial forces, and subject to military law as officers or soldiers.

This section shall not apply to any officer belonging to any such force when attached to or doing duty with, or to any non-commissioned officer or man belonging to any such force, when attached to or otherwise acting as part of or with, any portion of the regular, reserve, or auxiliary forces in the United Kingdom.

NOTE.

1. For definitions of "India" and "colony," see s. 190 (21), (23).

2. This section applies to what may be termed strictly colonial forces, that is to say, forces raised on the responsibility of the government of the colony. The amendments made by A.A.A., 1909 and 1912 are intended to make it clear that colonial legislatures can apply the whole of the Army Act, or any part of it, to the forces of the colony, subject to such adaptations as may be necessary to make them applicable.

3. So long as such forces are within the colony their discipline can be provided for by the law of the colony. This section removes any doubts as to whether that law would apply to such forces when outside the limits of the colony.

4. In order to prevent difficulties arising from deficiencies of the colonial law in cases where the colonial forces are serving with the regular forces, the section provides that such deficiencies may be remedied by the application of the Army Act, subject to any modification made by general orders of the general officer commanding the regular forces in question.

Part V. 5. *This section shall not apply, &c.* The effect of this provision (added by A.A.A., 1909) is that where the Army Act applies to colonial forces serving with the regulars (see, for instance, s. 175 (11) and s. 176 (8 A.)), it will apply to them as if they were regulars.

Mutual relations of regular forces and auxiliary forces.

178. When officers, non-commissioned officers, and men belonging to the auxiliary forces, or any pensioners, are subject to military law in pursuance of this Act, and when non-commissioned officers and men belonging to the reserve forces are subject to military law in pursuance of this Act, otherwise than when called out on permanent service, such officers, non-commissioned officers, men and pensioners shall be subject to this Act in all respects as if they were part of the regular forces, and the provisions of this Act shall be construed as if such officers, non-commissioned officers, men and pensioners were included in the expression "regular forces": Provided that nothing in this section contained shall affect the conditions of service of any officer, non-commissioned officer, or man belonging to such auxiliary or reserve forces, or of any pensioner.

NOTE.

1. The effect of this section combined with s. 50 (1) is to enable regular officers and officers of the territorial force to sit indiscriminately on court-martial for the trial of members of the regular forces and members of the territorial force; see, however, R.P., 20 B. As to removal of doubts respecting command, see s. 71.

2. Under s. 158 a member of the territorial force who has ceased to be subject to military law can, within three months afterwards, be tried by court-martial for an offence committed while he was so subject. See also T.R.F. Act, s. 25 (2).

3. The amendment to the section made by A.A.A., 1909, makes it clear that though reservists are subject to military law when called out for training and exercise, for duty in aid of the civil power, or when employed on military service under the orders of an officer of the regular forces, they do not form part of the regular forces except when called out on permanent service. Reserve Forces Act, 1882, s. 14 (2). See also note 3 on p. 538.

Modification of Act with respect to Royal Marines.

179. In the application of this Act to His Majesty's Royal Marines, the following modifications shall be made:—

- (1.) Nothing in this Act shall prejudice any power of the Admiralty to make Articles of War for the Royal Marines or otherwise prejudice the authority of the Admiralty over the Royal Marines or confer on any officers who are not officers of the Royal Marines any greater authority to command the Royal Marines than they have heretofore used; and a general court-martial for the trial of an officer or man in the Royal Marines shall not be convened except by an officer authorised by a warrant from the Admiralty in pursuance of this section, and except that, where such officer or man while subject to this Act is serving beyond the seas with any other portion of the regular forces,

and in the opinion of the general or other officer commanding those forces (such opinion to be stated in the order convening the court and to be conclusive), there is not present any officer authorised by warrant from the Admiralty to convene a general court-martial, a general court-martial convened by such general or other officer, if authorised to convene general courts-martial, may try such officer or man :

- (2.) A district court-martial for the trial of a man in the Royal Marines may be convened by any officer having authority to convene a district court-martial for the trial of any soldier of any other portion of the regular forces :
- (3.) Any power in relation to the convening of courts-martial, or of authorising an officer to convene courts-martial, or to delegate the powers of convening courts-martial, or of confirming the findings and sentences of courts-martial, or otherwise in relation to courts-martial, which under this Act His Majesty may exercise by any warrant or warrants, may be exercised in His Majesty's name by a warrant or warrants from the Admiralty ; and any such warrant may be addressed to any officer to whom any warrant of His Majesty can be addressed :
- (4.) Any power vested by this Act in His Majesty in relation to the confirmation of the findings and sentences of courts-martial, or otherwise in relation to courts-martial, may be exercised by the Admiralty :
- (5.) Without prejudice to any power of confirmation, the findings and sentences of any general or district court-martial on an officer or man of the Royal Marines may be confirmed by an officer authorised under this section to convene the same, or by any officer otherwise authorised under this Act to confirm the findings and sentences of general or district courts-martial, as the case may be, for the trial of any soldier of any other portion of the regular forces :
- (6.) Any power vested in His Majesty by this Act in relation to the making of rules, or to any order with respect to pay, or to any complaint in respect of an officer who thinks himself wronged, shall be vested in and exercised by the Admiralty, and the provisions of this Act respectively relating to such rules, orders, and complaints shall be construed, so far as respects the Royal Marines, as if the "Admiralty" were substituted for His Majesty, as well as for the Secretary of State and the Army Council :
- (7.) Anything required or authorised by this Act to be done by, to, or before a Secretary of State, the Army Council or Judge Advocate-General may, as regards the Royal Marines be done by, to, or before the

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Admiralty; and the provisions of this Act shall be construed, so far as respects the Royal Marines, as if "the Admiralty" were substituted for "Secretary of State," "Army Council," and "Judge Advocate-General," wherever those words occur:

- (8.) Anything required or authorised by this Act to be done by, to, or before the Commander-in-Chief of the forces in India, or the general or other officer commanding the forces in any colony or elsewhere may, as regards the Royal Marines, be done by, to, or before such officer as the Admiralty may by warrant from time to time appoint in that behalf, and if no such appointment is made, by such Commander-in-Chief or general or other officer:
- (9.) Anything authorised by this Act to be done by Royal Warrant may be done, as regards the Royal Marines, by warrant of the Admiralty; and the provisions of this Act with respect to Royal Warrants printed by the Government printer shall apply to any warrants of the Admiralty under this Act:
- (10.) Anything authorised to be done by the deputy of the Judge Advocate-General may be done by any one of the Commissioners for executing the office of Lord High Admiral, or by a secretary of the Admiralty:
- (11.) In the provisions of this Act with respect to evidence, the expression "King's Regulations" shall be deemed to include Admiralty Regulations:
- (12.) Nothing in the provisions of this Act relating to the term of enlistment, to the conditions of service, to appointment or transfer, to transfer to the reserve, to the re-engagement or prolongation of service, or to forfeiture of service of a soldier of the regular forces, or to the rules for reckoning service for discharge or transfer to the reserve shall apply to the Royal Marines:

Save that if regulations made by the Army Council and the Admiralty provide for the transfer of men of the Royal Marines to any other part of His Majesty's regular forces, a man of the Royal Marines may, with his consent, be so transferred in accordance with the said regulations, and subject to those regulations shall become a soldier of the said part of His Majesty's regular forces in like manner, so nearly as circumstances admit, as if he had been enlisted in pursuance of this Act:

And save that if any regulations so made provide for the transfer to the Royal Marines of men belonging to any other part of His Majesty's regular forces, a man belonging to such part may, with his consent, be so trans-

ferred in accordance with the said regulations, and, subject to those regulations, shall become a man of the Royal Marines in like manner, so nearly as circumstances admit, as if he had been enlisted in pursuance of the Acts relating to the Royal Marines :

- (13.) A marine on his re-engagement shall make a declaration either before a justice of the peace or person having under this Act the same authority as a justice of the peace for the purposes of enlistment, or before a naval officer commanding any ship commissioned by His Majesty, or before the commanding officer of any battalion or detachment of Royal Marines, in the form from time to time directed by the Admiralty :
- (14.) A man in the Royal Marines shall, for absence without leave, on conviction of that offence by court-martial, and for fraudulent enlistment, forfeit his service in like manner as he forfeits it for desertion under the Acts relating to the Royal Marines :
- (15.) Officers and men of the Royal Marines, during the time that they are borne on the books of any ship commissioned by His Majesty (otherwise than for service on shore), shall be subject to the Naval Discipline Act, and to the laws for the government of officers and seamen in the Royal Navy, and to the rules for the discipline of the Royal Navy for the time being, and shall be tried and punished for any offence in the same manner as officers and seamen in the Royal Navy :

Provided that—

- (a.) The last-mentioned provision shall not prevent the application of this Act to any person dealing with or having any relations with any such officer or man of the Royal Marines, or to any such officer or man if found on shore as a deserter or absentee without leave ; and
 - (b.) If any such officers or men of the Royal Marines are employed on land, the senior naval officer present may, if it seems to him expedient, order that they shall, during such employment be subject to military law under this Act, and while such order is in force they shall be subject to military law under this Act accordingly.
- (16.) If any officer or man of the Royal Marines who is borne on the books of any ship commissioned by His Majesty commits an offence for which he is not amenable to a naval court-martial, but for which he can be punished under this Act, he may be tried and punished for such offence under this Act :

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- (17.) The Admiralty may direct that an officer or man of the Royal Marines may be tried under this Act for any offence committed by him on shore, whether he be or be not amenable to a naval court-martial for such offence, or be or be not borne on the books of any ship commissioned by His Majesty :
- (18.) Where any officer or man of the Royal Marines is on board any ship commissioned by His Majesty, but is borne on the books thereof for service on shore, he shall be subject to the Naval Discipline Act to such extent and under such regulations as His Majesty by Order in Council from time to time directs, and so far as he does not so direct as is for the time being directed by Order in Council with respect to the other regular forces :
- (19.) Any naval prison within the meaning of the Naval Discipline Act shall be deemed to be included in the definition of a public prison for the purposes of this Act, and the Admiralty shall not have any authority to establish any military prison under this Act :
- (20.) In this section the expression " Admiralty " means the Lord High Admiral or the Commissioners for executing the office of the Lord High Admiral for the time being, or any two of them :
- (21.) The expression " man of the Royal Marines " includes a non-commissioned officer of the Royal Marines ; and also a marine raised or enrolled under the Naval Reserve Act, 1900, or the Naval Forces Act, 1903, when called into actual service and when being trained or exercised.

NOTE.

1. As the Admiralty by commission from the Crown exercise the powers of the Crown in relation to the navy, the powers which by this Act are vested in His Majesty in relation to the army are by this section given to the Admiralty.

2. Para. (1). This paragraph prevents an officer of the army from convening a general court-martial for the trial of an officer or man in the marines except in the circumstances here mentioned. The confirmation is provided for by paragraphs (4) and (5).

3. Paras. (3)—(5). These confer on the Admiralty the power of convening and of confirming the findings and sentences of general courts-martial, and of conferring by warrant on officers the power to convene, and to confirm the findings and sentences of, both general and district courts-martial.

4. Para. (5) provides that, in the absence of any such confirmation by the Admiralty or by an officer holding a warrant from the Admiralty, the finding and sentence of a general or district court-martial on a marine may be confirmed by an officer holding a warrant which enables him to confirm the findings and sentences of general or district courts-martial, as the case may be, on soldiers of other portions of the regular forces.

5. Para. (12). The formalities in the enlistment of the marines will be those contained in Part II of this Act (see ss. 80, 81), but the term of enlistment, the conditions of service, transfer, and forfeiture of service, will

remain under the Acts relating to the marines, 10 & 11 Vict. c. 68; Part V. 20 Vict. c. 1.

6. Para. (15), Proviso (a). This proviso refers to ss. 154 and 156. See also note 2 to s. 13. ss. 179-180.

7. Proviso (b). *Employed on land.* This refers to employment for a length of time amounting to an expedition, and does not refer to the mere landing of marines for a temporary purpose.

8. Para. (17). *Offence.* This means an offence punishable under this Act.

180. (1.) In the application of this Act to His Majesty's forces when serving in India the following modification shall be made:—

A court-martial may take the same proceedings for the punishment of a person not subject to military law who, in any part of India, commits any offence as a witness before a court-martial, or is guilty of a contempt of a court-martial, as might be taken by any civil court in that part of India in the case of the like offence in that court, and any court in which such proceedings are taken shall have jurisdiction to punish such person accordingly.

(2.) In the application of this Act to His Majesty's Indian forces, the following modifications shall be made:—

(a.) Nothing in this Act shall prejudice or affect the Indian military law respecting officers or soldiers or followers in His Majesty's Indian forces, being natives of India; and on the trial of all offences committed by any such native officer, soldier, or follower, reference shall be had to the Indian military law for such native officers, soldiers, or followers, and to the established usages of the service, but courts-martial for such trials may be convened in pursuance of this Act:

(b.) For the purposes of this Act the expression "Indian military law" means the Articles of War or other matters made, enacted, or in force or which may hereafter be made, enacted, or in force under the authority of the Government of India; and such articles or other matters shall extend to such native officers, soldiers, and followers wherever they are serving:

(c.) The Governor-General of India may suspend the proceedings of any court-martial held in India on an officer or soldier belonging to His Majesty's Indian forces:

(d.) An officer belonging to His Majesty's Indian forces who thinks himself wronged by his commanding officer, and on due application made to him does not receive the redress to which he may consider himself entitled, may complain to the officer appointed in that behalf by the Commander-in-Chief of the forces in India, with the approval of the Governor-General, and that officer shall cause his complaint to be inquired into, and thereupon

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report to the Governor-General in order to receive the further directions of the Governor-General :

[Paragraph (e) was repealed by A.A.A. 1907.]

- (f.) The Governor-General of India may reduce any warrant officer not holding an honorary commission to a lower grade of warrant rank, or may remand any such warrant officer to regimental duty in the regimental rank held by him immediately previous to his appointment to be a warrant officer :
- (g.) The provisions of this Act relating to warrant officers not holding honorary commissions shall apply to hospital apprentices in India although not appointed by warrant :
- (h.) Part II of this Act shall not apply to His Majesty's Indian forces, but persons may be enlisted and attested in India for medical service or for other special service in His Majesty's Indian forces for such periods, by such persons, and in such manner as may be from time to time authorised by the Governor-General of India.

(3.) In this Act, so far as regards India, any reference to an indictable offence, or an offence punishable on indictment, shall be deemed to refer to an offence punishable with rigorous imprisonment.

NOTE.

1. Sub-section (1). As an Indian court has not the power which an English court has to punish contempt committed before itself, this sub-section gives the necessary jurisdiction to punish a civilian guilty of contempt of a court-martial.

2. Sub-section (2). *Natives of India*, see definition in s. 190 (22).

Natives of India are subject to the Indian Articles of War, and the Acts made by the Government of India ; but a court-martial on such natives, although it must accord in every respect with a court convened under the Indian military law, may under this sub-section be convened by an officer authorised to convene a court-martial under this Act. On the other hand, Europeans in the Indian forces are subject to the laws and regulations for the government of the British Army. Half-castes and persons born in India, but of certain degrees of European descent, specified in the Indian Articles of War, are, for the purposes of this Act, Europeans. It will be observed that the Indian Articles of War are by this sub-section expressly extended to the natives of India belonging to the Indian forces in whatever part of the world they are serving.

3. Sub-section (2) (d). See s. 42 and note.

4. Sub-section (2) (h). Under 23 & 24 Vict. c. 100, it is illegal to enlist European forces for service in India only. This sub-section permits Europeans to be enlisted for medical or other special service in manner from time to time provided by the Governor-General.

5. It will be recollected that under s. 190 (21), "India" includes the territories in India under the dominion of any native prince or princes as well as the territories the government of which is vested in His Majesty.

181. (1.) The provisions of this Act with respect to enlistment shall not apply to a person enlisted or enrolled in any of His Majesty's auxiliary forces, except so far as such person enlists or enrolls himself, or attempts to enlist or enrol himself, in the regular forces, or in a force raised in India or a Colony, and except so far as the said provisions may be applied by any other Act.

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Modification of Act with respect to auxiliary forces.

(2.) The provisions of this Act shall apply to the permanent staff of the auxiliary forces who are not otherwise part of the regular forces, in like manner as if such permanent staff were part of the regular forces.

(3.) The provisions of this Act with respect to billeting and impressment of carriages shall apply to His Majesty's auxiliary forces when subject to military law, in like manner as if they were part of the regular forces, subject to the following modification :—

(4.) An order issued and signed as a route or an order signed by the officer commanding the unit of the Territorial Force, the battalion of militia, or the battalion or corps of yeomanry, or volunteers, shall be substituted for a route—

(a.) In the case of any man of the Territorial Force, or militia-man attending for his preliminary training ; and

(b.) In the case of any officer, non-commissioned officer, or man of the Territorial Force or militia assembled for training and exercise at the place in the United Kingdom appointed by His Majesty in that behalf ; and

(c.) In the case of any officer, non-commissioned officer, or man of the Territorial Force or militia embodied under an order of His Majesty, who has joined his corps at the place appointed for his assembling ; and

(d.) In the case of any officer, non-commissioned officer, or man, of the yeomanry, or volunteers attending at the place at which his corps is required to assemble ;

and an order to billet such officer, non-commissioned officer, or man, purporting to be signed in manner required by this Act in the case of a route or by the officer commanding an unit of the Territorial Force, a battalion of militia, or a battalion or corps of yeomanry or volunteers, as the case may be, shall be evidence, until the contrary is proved, of the order being issued in accordance with this Act, and when delivered to an officer, non-commissioned officer, or man, of the Territorial Force, militia, yeomanry, or volunteers, shall be a sufficient authority to such officer, non-commissioned officer, or man, to demand billets, and when produced by an officer, non-commissioned officer, or man, to a constable shall be conclusive evidence to such constable of the authority of the officer, non-commissioned officer, or man, producing the same to demand billets in accordance with the order.

Part V. (5.) The competence or liability of an officer of the auxiliary forces to be nominated or elected to, or to hold the office of sheriff, mayor, or alderman, or an office in a municipal corporation, shall not be affected by reason of the battalion or corps to which he belongs being assembled for annual training at the time of such nomination or election, or during the time of his tenure of office.

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(6.) When a member of the volunteers or the Territorial Force being a non-commissioned officer or private, is subject to military law, dismissal may be awarded to him as a punishment, in the event of his committing any offence triable by court-martial or punishable by a commanding officer under this Act.

NOTE.

1. Subs. (1). *Except so far as such person enlists.* For the offence of fraudulent enlistment, see s. 18; for that of unauthorised enlistment, see ss. 32, 33, and 99.

Except so far as the said provisions. This refers, e.g., to the application of the procedure for enlistment to the enlistment into the territorial force; T.R.F. Act; s. 10.

2. Subs. (3). *Billeting and impressment of carriages.* See Part III of the Act.

3. Subs. (5). If a sheriff is an officer of the territorial force at the time when his corps is embodied, he is discharged from performing personally the office of sheriff, and the under-sheriff is to perform the duty (T.R.F. Act, s. 23 (3)).

4. The seat of a member of Parliament is not vacated by the acceptance of a commission in the territorial force; and a person in the territorial force is not liable to any punishment for absence during the time he is going to vote at any election of a member to serve in Parliament, or during the time he is returning from such election. A person in the territorial force cannot be compelled to serve as a peace officer, or as a parish officer (T.R.F. Act, s. 23 (4)). As to an officer or N.C.O. of the territorial force being exempt from serving on any jury, see Ch. XII, para. 8, and T.F. Regs. 418-428.

Special provisions as to warrant officers.

182. The provisions of this Act shall apply to a warrant officer not holding an honorary commission in like manner as if he were a non-commissioned officer, subject nevertheless (in addition to the modifications for a non-commissioned officer) to the following modifications:—

(1.) He shall not be punished by his commanding officer nor tried by regimental court-martial, nor sentenced by a district court-martial to any punishment not in this section mentioned; and

(2.) He may be sentenced—

(a.) by a district court-martial to such forfeitures, fines, and stoppages as are allowed by this Act, and, either in addition to or in substitution for any such punishment, to be dismissed from the service, * * * or to be reduced to the bottom or any other place in the list of the rank which he

holds, or to be reduced to an inferior class of warrant officer (if any), or to be reduced to a lower grade, or, if he was originally enlisted as a soldier, but not otherwise, to the ranks ; or

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- (b.) by any court-martial having power to try him, other than a district court-martial, to any punishment which under this section, a district court-martial has power to award either in addition to or in substitution for any other punishment.
- (3.) A warrant officer reduced to the ranks, or remanded to regimental duty in the rank of private, shall not be required to serve in the ranks as a soldier ;
- (4.) The president of a court-martial for the trial of a warrant officer shall in no case be under the rank of captain.

NOTE.

1. *Not holding an honorary commission.* Warrant officers holding honorary commissions are officers within the meaning of the Act ; s. 190 (4), (5). This section makes the Act apply to warrant officers who do not hold such commissions as if they were N.C.O.'s. Consequently, subject to the modifications in this and the next section, the word "soldier" throughout the Act includes a warrant officer not holding an honorary commission. See s. 190 (6).

2. In this and the next section, the commanding officer is the commanding officer as defined by R.P. 129. See K.R., 456.

3. Para. (2). A district court-martial can only sentence a warrant officer to the punishments mentioned in para. (a) ; but a general or field general court-martial can award any of the punishments so mentioned, either in addition to, or in substitution for, any punishment which they can award under their ordinary powers.

183. In the application of this Act to a non-commissioned officer, the following modifications shall apply :—

Special provisions as to non-commissioned officer.

- (1.) The obligation on a commanding officer to deal summarily with a soldier charged with drunkenness shall not apply to a non-commissioned officer charged with drunkenness :
- (2.) The Army Council, and in India the Commander-in-Chief of the forces in India, or such officer as the Commander-in-Chief of the forces in India with the approval of the Governor-General of India in Council may appoint, and on active service the officer commanding-in-chief in the field and any general officer he may appoint, may reduce any non-commissioned officer to any lower grade or to the ranks :
- (3.) A non-commissioned officer may, by the sentence of a court-martial, be ordered to forfeit seniority of rank or be reduced to any lower grade or to the ranks, either in addition to or without any other punishment, in respect of an offence :
- (4.) A non-commissioned officer sentenced by court-martial to penal servitude, field punishment, imprisonment, or detention, shall be deemed to be reduced to the ranks :

Part V. Provided that—

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- (a.) An army schoolmaster shall not be liable to be reduced to the ranks (unless he has been transferred from the ranks, in which case he may be reduced to the rank which he held at the date of transfer), but may nevertheless be sentenced by a court-martial to penal servitude, imprisonment, or detention, or to a lower grade of pay, or to be dismissed, and if sentenced to penal servitude, imprisonment, or detention, shall be deemed to be dismissed; but
- (b.) The Army Council, and in India the Commander-in-Chief of the forces in India, or such officer as the Commander-in-Chief of the forces in India with the approval of the Governor-General of India in Council may appoint, may dismiss an army schoolmaster;
- (c.) A soldier being an acting non-commissioned officer by virtue of his employment either in a superior rank or in an appointment may be ordered by his commanding officer either for an offence or otherwise to revert to his permanent grade as a non-commissioned officer, or, if he has no permanent grade above the ranks, to the ranks.

NOTE.

- 1. *Non-commissioned officer.* See definition in s. 190 (5).
- 2. Para. (1). *Obligation.* See s. 46 (3).
- 3. Paras. (2), (3), and proviso (c). Except in India or on active service a N.C.O. can only be reduced by the Army Council or by sentence of a court-martial; but inasmuch as the word "non-commissioned officer" includes acting N.C.O. (see s. 190 (5)), it is provided by proviso (c) that a soldier having acting rank only may be ordered by his commanding officer, for an offence or for any other cause, to revert to his permanent grade, or, if he has no permanent grade as N.C.O., to the ranks. As to reduction of N.C.O. convicted by the civil power, see K.R., 506. As to reduction of N.C.O. removed from an appointment, see K.R., 303.

When a N.C.O. is reduced to the ranks under para. (2), the date from which the reduction is to take effect should be specified in the order. See K.R., 805.

- 4. Para. (3) must be read in conjunction with K.R., 282, defining what are ranks. Lance and acting rank is a matter to be dealt with entirely by the commanding officer, and not being legally a rank under the K.R. is not cognisable in the sentence of a court-martial. Therefore a sentence of reduction from or to lance rank, *e.g.*, from or to the rank of lance-serjeant or lance-corporal, is inoperative. But a lance-corporal, being a N.C.O., loses his lance rank under para. (4) upon being sentenced to any of the punishments therein mentioned.

- 5. *Ordered to forfeit seniority of rank.* See note 13 to s. 44.

- 6. Para. (4). Although under this paragraph a N.C.O. sentenced to penal servitude, imprisonment, detention, or field punishment, is, *ipso facto*, reduced to the ranks, it is desirable to specify the reduction in the sentence. See R.P., Ap. II, pp. 696 and

- 7. Proviso (a). This proviso allows a schoolmaster to be sentenced to penal servitude, imprisonment, or detention, although he cannot be reduced to the ranks unless he has been transferred from the ranks, in which case he

may be reduced to the rank which he held at the date of transfer. It does not of course prevent the infliction of any less punishment than detention.

Part V.

ss.

184-185.

184. In the application of this Act to persons who do not belong to His Majesty's forces, the following modifications shall be made :—

Special provisions as to application of Act to persons not belonging to His Majesty's forces.

(1.) Where an offence has been committed by any person subject to military law who does not belong to His Majesty's forces, such person may be tried by any description of court-martial other than a regimental court-martial, convened by an officer authorised to convene such description of court-martial, within the limits of whose command the offender may for the time being be, and may be tried and on conviction dealt with and punished accordingly.

(2.) Any person subject to military law who does not belong to His Majesty's forces shall, for the purposes of this Act relating to offences, be deemed to be under the command of the commanding officer of the corps, or portion of a corps (if any), to which he is attached, and if he is not attached to any corps, or portion of a corps, under the command of any officer who may for the time being be named as his commanding officer by the general or other officer commanding the force with which such person may for the time being be, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said general or other officer commanding, but such person shall not be liable to be punished by a commanding officer or by a regimental court-martial.

Provided that a general or other officer commanding shall not place a person under the command of an officer of rank inferior to the official rank of such person if there is present, at the place where such person is, any officer of higher rank under whose command he can be placed.

NOTE.

1. This section provides for the trial by court-martial of a person who does not belong to either the regular or the auxiliary forces, but who is subject to military law under either s. 175 (7) and (8) or s. 176 (10).

2. Para. (2). This paragraph has reference to certain offences, see 7 (4), 14 (2), 15 (8), and also to the investigation by the commanding officer, see ss. 45 and 46; see also s. 49 (field general court-martial), and R.P. 129.

Saving Provisions.

185. All jurisdiction and powers of a Secretary of State under this Act with respect to military convicts or military prisoners, or to prisons other than military prisons, shall in Ireland be vested in the General Prisons Board, and shall be exercised by that Board in the manner and subject to the regulations in and under which the jurisdiction and powers of that Board are exercised under the General Prisons (Ireland) Act, 1877, and the provisions of this Act with respect to the orders and regulations of the Secretary of State shall apply to the orders and regulations of such Board.

Special provision as to prisoners and prisons in Ireland.

Part V. 186. Nothing in this Act shall affect the application of the Naval Discipline Act, or any Order in Council made thereunder, to any of His Majesty's forces when embarked on board any ship commissioned by His Majesty, and the auxiliary forces shall be deemed to be part of His Majesty's forces within the meaning of that Act.

—
ss.
188-189.
Saving of
Naval Dis-
cipline Act,
as to forces
when on
board His
Majesty's
ships.

NOTE.

1. The provision of the Naval Discipline Act here referred to is s. 88.
2. As to Order in Council, see pp 728 to 733.

Definitions.

Application of Act to Channel Islands and Isle of Man. 187. This Act shall apply to the Channel Islands and the Isle of Man in like manner as if they were part of the United Kingdom, subject to the following modifications :—

- (1.) The provisions of this Act relating to billeting and the impressment of carriages shall not extend to the Channel Islands and the Isle of Man :
- (2.) For the purposes of the provisions of this Act relating to the execution of sentences of penal servitude, imprisonment, or detention and to prisons and detention barracks, the Channel Islands and the Isle of Man shall be deemed to be colonies, and any sentence of penal servitude, imprisonment, or detention passed in any of those islands shall be deemed to have been passed in a colony :
- (3.) For the purposes of the provisions of this Act relating to the auxiliary forces the Channel Islands shall be deemed to be colonies :
- (4.) For the purposes of the provisions of this Act relating to the militia the Isle of Man shall be deemed to be a colony.

NOTE.

1. Para. (2). The effect of this is to require soldiers sentenced to penal servitude, imprisonment, or detention in the Channel Islands or Isle of Man to be brought to the United Kingdom under the same circumstances as when they are sentenced in a colony. See s. 131 (2).

2. Para. (4). The volunteers in the Isle of Man have not up to the present been transferred to the territorial force. They remain, therefore, as formerly, subject to the provisions of the Volunteer Acts.

Application of Act to ships.

188. Where a person subject to military law is on board a ship, this Act shall apply until he arrives at the port of disembarkation in like manner as if he and the officers in command of him were on land at the place at which he embarked on board the said ship, subject to this proviso, that, if he is tried and sentenced while so on board ship, any finding and sentence, so far as not confirmed and executed on board ship, may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.

NOTE.

1. Under this section the soldier will carry with him on board ship the military law to which he was subject at the time when he

embarked. Consequently an officer holding a warrant to convene court-martial at the place of such embarkation would be able to convene a court-martial on board ship. On the other hand, if a man is tried on board ship, the sentence can be confirmed and executed at the place of disembarkation, by the officer who would have had authority to confirm it if the court-martial had been convened and the trial held at that place.

2. As to troops *en route* for the seat of war, see note 3 to s. 189.

3. As to troops embarked on board His Majesty's ships, see ss. 122, 186, and note.

Part V.

ss.

188-189.

189. (1.) In this Act, if not inconsistent with the context, the expression "on active service" as applied to a person subject to military law means whenever he is attached to or forms part of a force which is engaged in operations against the enemy, or is engaged in military operations in a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country.

Interpretation of term "on active service."

(2.) Where the governor of a colony in which any of His Majesty's forces are serving, or if the forces are serving out of His Majesty's dominions, the general officer commanding such forces, declares at any time or times that, by reason of the imminence of active service, or of the recent existence of active service, it is necessary for the public service that the forces in the colony or under his command, as the case may be, should be temporarily subject to this Act, as if they were on active service, then, on the publication in general orders of any such declaration, the forces to which the declaration applies shall be deemed to be on active service for the period mentioned in the declaration, so that the period mentioned in any one declaration do not exceed three months from the date thereof.

(3.) If at any time during the said period the governor or general officer for the time being is of opinion that the necessity continues he may from time to time renew such declaration for another period not exceeding three months, and such renewal shall be published and have effect as the original declaration, and if he is of opinion that the said necessity has ceased, he shall state such opinion, and on the publication in general orders of such statement, the forces to which the declaration applies shall cease to be deemed to be on active service.

(4.) Every such declaration, renewal of declaration, and statement by the governor of a colony shall be made by proclamation published in the official gazette of the colony, and it shall be the duty of every governor or general officer making a declaration or renewal of a declaration under this section, if he has the means of direct telegraphic communication with a Secretary of State, to obtain the previous consent of the Secretary of State to such declaration or renewal, and in any other case to report the same with the utmost practicable speed to the Secretary of State.

Part V. (5.) The Secretary of State may, if he thinks fit, annul a
 ss. declaration or renewal purporting to be made in pursuance of this
 189-190. section, without prejudice to anything done by virtue thereof before
 the date at which the annulment takes effect, and until that date
 any such declaration or renewal shall be deemed to have been
 duly made in accordance with this section, and shall have full effect.

NOTE.

1. It will be observed that the power given by this section to anticipate, or prolong, as it were, the period of active service is given to the Governor in a colony, and to the General when out of the King's dominions. The declaration of the Governor must be by proclamation in the official gazette, but it does not take effect as regards the forces until the declaration has been published in general orders. On such publication the troops will be deemed to be on active service, although active service, as defined by the Act, has not actually begun or has ended.

2. For definition of colony, see s. 190 (28).

3. Subs. (1). Even before embarkation troops under orders to proceed to the seat of war are attached to, or form part of, a force which is engaged in operations against the enemy, and therefore, under s. 188, can, when on board a transport en route for the seat of war, be considered as on active service.

Interpre-
 tation of
 terms.

190. In this Act, if not inconsistent with the context, the following expressions have the meanings hereinafter respectively assigned to them; that is to say,

- (1.) The expression "Secretary of State" means one of His Majesty's Principal Secretaries of State :
- (2.) The expression "Lord Lieutenant of Ireland" includes the lords justices or other chief governor or governors of Ireland :
- (3.) The expression "Commander-in-Chief" means the field-marshal or other officer commanding in chief His Majesty's forces for the time being :
- (4.) The expression "officer" means an officer commissioned or in pay as an officer in His Majesty's forces, or any arm, branch, or part thereof ; it also includes a person who, by virtue of his commission, is appointed to any department or corps of His Majesty's forces, or of any arm, branch, or part thereof ; it also includes a person, whether retired or not, who, by virtue of his commission or otherwise, is legally entitled to the style and rank of an officer of His Majesty's said forces, or of any arm, branch, or part thereof :
 Warrant and other officers holding honorary commissions are officers within the meaning of this Act, subject to the exceptions in this Act mentioned :
- (5.) The expression "non-commissioned officer" includes an acting non-commissioned officer, and includes an army schoolmaster when not a warrant officer, but save as is in this Act mentioned does not include a warrant officer not holding an honorary commission :

- (6.) The expression "soldier" does not include an officer as defined by this Act, but, with the modifications in this Act contained in relation to warrant officers and non-commissioned officers, does include a warrant officer not having an honorary commission and a non-commissioned officer, and every person subject to military law during the time that he is so subject :
- (7.) The expression "superior officer" when used in relation to a soldier, includes a warrant officer not holding an honorary commission, and also includes a non-commissioned officer as above defined :
- (8.) The expressions "regular forces" and "His Majesty's regular forces" mean officers and soldiers who by their commission, terms of enlistment, or otherwise, are liable to render continuously for a term military service to His Majesty in any part of the world, including soldiers of the Reserve forces when called out on permanent service, and including, subject to the modifications in this Act mentioned, the Royal Marines and His Majesty's Indian forces, and the Royal Malta Artillery :

The expression "reserve forces" means the army reserve force and the militia reserve force :

* * * * *

[Paragraphs (10) and (11) were repealed by the Reserve Forces Act, 1882 (45 & 46 Vict. c. 48), and that Act enacted (s. 28) that in the Army Act the expression "army reserve force" should mean the army reserve under the Reserve Forces Act, 1882.]

- (12.) The expression "auxiliary forces" means the territorial force, the militia, the yeomanry, and the volunteers :
- (13.) The expression "militia" includes the general and the local militia :
- (14.) The expression "volunteers and volunteer forces" includes the Honourable Artillery Company of London :
- (15.) The expression "corps"—

(A) In the case of His Majesty's regular forces—

- (i.) Means any such military body, whether known as a territorial regiment or by any different name, as may be from time to time declared by Royal Warrant to be a corps for the purpose of this Act, and is a body formed by His Majesty, and either consisting of associated battalions of the regular and auxiliary forces, or consisting wholly of a battalion or battalions of the regular forces, and in either case with or without the whole or any part of the permanent staff of any of the auxiliary forces not included in such military body ; and
- (ii.) Means the Royal Marine forces, in this Act referred to as the Royal Marines ; and also

Part V.

s. 190.

- (iii.) Means any portion of His Majesty's regular forces, by whatever name called, which is declared by Royal Warrant to be a corps for the purposes of this Act ; and also
 - (iv.) Means any other portion of His Majesty's regular forces employed on any service and not attached to any corps as above defined ;
 - (v.) And any reference in Part II of this Act to a corps of the regular forces shall be deemed to refer to any such military body as is hereinbefore defined to form a corps ; and
- (B) In the case of His Majesty's auxiliary forces—
- (i.) Means any such military body, whether known as a territorial regiment or by any different name, as may be from time to time declared by Royal Warrant to be a corps for the purposes of this Act, and is a body formed by His Majesty, and either consisting of associated battalions of the regular and auxiliary forces, or consisting wholly of a battalion or battalions of the auxiliary forces, and either inclusive or exclusive of the whole or any part of the permanent staff of any part of the auxiliary forces ; and
 - (ii.) Means any other portion of His Majesty's auxiliary forces employed in any service and not attached to any corps as above defined :
- (16.) The expression "battalion," in the application of this Act to cavalry, artillery, or engineers, shall be construed to mean regiment, brigade, or other body into which His Majesty may have been pleased to divide such cavalry, artillery, or engineers :
 - (17.) The expression "regimental" means connected with a corps, or with any battalion or other sub-division of a corps :
 - (18.) The expression "military decoration" means any medal, clasp, good-conduct badge, or decoration :
 - (19.) The expression "military reward" means any gratuity or annuity for long service or good conduct ; it also includes any good conduct pay or pension and any other military pecuniary reward :
 - (20.) The expression "enemy" includes all armed mutineers, armed rebels, armed rioters, and pirates :
 - (21.) The expression "India" means British India, together with any territories of any native prince or chief under the suzerainty of His Majesty exercised through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India ; and the expression "British India" means all territories and places within His Majesty's dominions which are for the time

being governed by His Majesty through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India :

- (22.) The expression "native of India" means a person triable and punishable under Indian military law as defined by this Act :
- (23.) The expression "colony" means any part of His Majesty's dominions exclusive of the British Islands and of British India, and includes Cyprus and any British protectorate, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony :
- (24.) The expression "foreign country" means any place which is not situate in the United Kingdom, a colony, or India, as above defined, and is not on the high seas :
- (25.) The expression "beyond the seas" means out of the United Kingdom, the Channel Islands, and Isle of Man and the expression "station beyond the seas" includes any place where any of His Majesty's forces are serving out of the United Kingdom, the Channel Islands, and Isle of Man :
- (26.) The expression "governor-general" in its application to India means the Governor-General of India in Council :
- (27.) The expression "governor" as respects the presidency of Bengal means the Governor-General of India in Council, and as respects the presidencies of Madras and Bombay means the Governor in Council of the presidency, and in its application to a colony means the Governor-General, Governor, High Commissioner or Commissioner, and includes the lieutenant-governor or other officer administering the government of the colony.
- (28.) The expressions "oath" and "swear," and other expressions relating thereto, include affirmation or declaration, affirm or declare, and expressions relating thereto, in cases where an affirmation or declaration is by law allowed instead of an oath :
- (29.) The expression "superior court" in the United Kingdom means His Majesty's High Court of Justice in England, the Court of Session in Scotland, and His Majesty's High Court of Justice at Dublin :
- (30.) The expression "supreme court" means, as regards India, any high court or any chief court ; and the expression "court of superior jurisdiction," as regards a colony, means a court exercising in that colony the like authority as the High Court of Justice in England :
- (31.) The expression "civil court" means, with respect to any crime or offence, a court of ordinary criminal jurisdiction, and includes a court of summary jurisdiction :

Part V.
s. 190.

(32.) The expression "prescribed" means prescribed by any rules of procedure made in pursuance of this Act :

(33.) The expression "misdemeanor," as far as regards Scotland, means a crime or offence, and so far as regards India means a crime punishable by fine and rigorous or simple imprisonment at the discretion of the court :

(34.) The expression "Summary Jurisdiction Acts"—

(a.) As regards England has the same meaning as in the Summary Jurisdiction Act, 1879 :

(b.) As regards Scotland means the Summary Procedure Act, 1864, and any Acts amending the same ; and

(c.) As regards Ireland, means within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district ; and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act amending the same :

(35.) The expression "court of summary jurisdiction"—

(a.) As regards England has the same meaning as in the Summary Jurisdiction Act, 1879 ; and

(b.) As regards Ireland, means any justice or justices of the peace, police magistrate, stipendiary or other magistrate, or officer by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to ; and

(c.) As regards Scotland, means the sheriff or sheriff substitute, or any two justices of the peace sitting in open court, or any magistrate or magistrates to whom jurisdiction is given by the Summary Procedure (Scotland) Act, 1864 ; and

(d.) As regards India, a colony, the Channel Islands, and Isle of Man, means the court, justices, or magistrates who exercise jurisdiction in the like cases to those in which the Summary Jurisdiction Acts are applicable :

(36.) The expression "court of law" includes a court of summary jurisdiction :

(37.) The expression "county court judge" includes—

(a.) In the case of Scotland, the sheriff or sheriff substitute ; and

(b.) In the case of Ireland, the judge of the Civil Bill Court :

(38.) The expression "constable" includes a high constable and a commissioner, inspector, or other officer of police :

(39.) The expression "police authority" means the commissioner, commissioners, justices, watch committee, or other authority having the control of a police force :

Court of
summary
jurisdiction.

- (40.) The expression "horse" includes a mule, and the provisions of this Act shall apply to any beast of whatever description used for burden or draught, or for carrying persons, in like manner as if such beast were included in the expression "horse."

Part V.
s. 190.

NOTE.

1. It may be observed that under the Interpretation Act, 1889, in the construction of every Act of Parliament, masculine words include the feminine, the plural includes the singular, and the singular includes the plural; the word "month" means a calendar month, and "oath," "affidavit," and "swear," include affirmation, declaration, and affirm or declare. This enactment, however, does not apply to documents not Acts of Parliament, and therefore in any such document, e.g., a warrant, "oath" will not include affirmation, &c., but under R.P. 134 (c) "month" in a sentence of imprisonment, detention, or field punishment, means, unless the contrary is expressed, a calendar month. Throughout the Act a year means twelve calendar months and may be held to commence on any day in any month.

2. Para. (4.) *Officer.* This includes half-pay and every other description of officer, though not subject to military law under s. 175. Membership of the National Reserve in itself establishes no claim to military rank.

3. Para. (6.) *Soldier.* This expression practically includes all persons subject to military law other than officers.

Modifications. See ss. 182, 188.

4. Para. (8.) *Regular Forces.* This definition includes the marines. The distinction between the regular and other forces is that, as a rule, the regular forces are liable to serve continuously in any part of the world. Reservists become soldiers of the regular forces when called out on permanent service; when called out for training and exercise, or for duty in aid of the civil power, they remain reservists but are subject to military law.

5. Para. (15.) *Corps.* As the corps is the unit for the purposes of enlistment and some other purposes under the Act, a power is given to His Majesty by warrant to declare any portion of the forces to be a corps for the purposes of the Act, but even in cases where a warrant has not been issued, a portion of the regular or auxiliary forces employed on any service, and not attached to any corps as defined by the Act or such warrant, becomes a corps for the purposes of the Act. See the Warrant now in force, and Ch. XI, paras. 4-6.

6. Para. (21.) *India.* It will be observed that "India," for the purposes of the Act, includes the dominions of Indian native princes as well as "British India"—that is to say, all territories and places in H.M.'s dominions governed through the Governor-General of India.

7. Para. (23.) *Colony.* India is not treated as a colony for the purposes of the Act.

The reference to a central legislature refers to such a case as Canada, where the Dominion parliament assembled at Ottawa is the central legislature, and the provincial parliaments for the provinces of Quebec, Ontario, &c. are local legislatures. Under the definition, the whole of Canada being under one central legislature will be one colony, and the provinces of Quebec, Ontario, &c., will be parts of that colony, and not separate colonies, for the purposes of the Act. Similarly the whole of the Commonwealth of Australia (see 63 & 64 Vict. c. 12) will now be one colony, and Victoria, New South Wales, &c., will no longer be separate colonies for the purposes of the Act.

Part V. 8. Para. (24.) *Foreign country.* This includes the whole world, with the exception of the United Kingdom, India, and the colonies as above defined.

s. 190. 9. Para. (25.) *Beyond the seas.* It will be observed that the Channel Islands and the Isle of Man, though for certain purposes treated as colonies (see s. 187), are treated as not being beyond the seas.

10. Paras. (34) and (35). See also the definitions in the Interpretation Act, 1889, s. 13 (6) and following. The Summary Procedure (Scotland) Act, 1864, was repealed and replaced by the Summary Jurisdiction (Scotland) Act, 1908.

Part VI.

PART VI.

COMMENCEMENT AND APPLICATION OF ACT AND REPEAL.

Part VI (ss. 191-193) and the Fifth Schedule are repealed. |

s. 96.

FIRST SCHEDULE.

Form of Oath to be taken by a Master whose Apprentice has absconded, and of Justice's Certificate annexed.

I, *A.B.*, of _____ do make oath, that I am by trade a _____, and that _____ was bound to serve as an apprentice to me in the said trade, by indenture dated the _____ day of _____ for the term of _____ years; and that the said _____ did on or about the _____ day of _____ abscond and quit my service without my consent; and that to the best of my knowledge and belief the said _____ is aged about _____ years. Witness my hand at _____, the _____ day of _____ 19 ____.

(Signed) *A.B.*

I hereby certify that the foregoing affidavit
was sworn before me at _____,
this _____ day of _____,
19 ____.

(Signed) *C.D.*,
Justice of the Peace
for _____

Form of Oath to be taken by a Master whose Indentured Labourer in India or a Colony has absconded, and of Justice's Certificate annexed.

I, _____, of _____, do make oath that _____ was bound to me to serve as an indentured labourer by indenture dated the _____ day of _____ for the term of _____ years, and that the said _____ did on or about the _____ day of _____ abscond and quit my service without my consent. Witness my hand at the _____ day of _____ 19 ____.

(Signed) *A.B.*

I hereby certify, &c. [*as for apprentices*].

SECOND SCHEDULE.

SS.
103-108

BILLETING.

PART I.

Accommodation to be furnished by Keeper of Victualling House.

A keeper of a victualling house on whom any officer, soldier, or horse is billeted—

- (1.) Shall furnish the officer and soldier with lodging and attendance; and
- (2.) Shall, if required by the soldier, furnish him for every day of the march and for not more than two days, if the soldier is halted at an intermediate place on the march for more than two days, and on the day of arrival at the place of final destination, with breakfast, hot dinner, and supper on each day, such meals to consist of such quantities of food and drink as may from time to time be fixed by His Majesty's Regulations, not exceeding—
 - (a) For breakfast, six ounces of bread, one pint of tea with milk and sugar, four ounces of bacon;
 - (b) For hot dinner, one pound of meat previous to being dressed, eight ounces of bread, eight ounces of potatoes or other vegetables, one pint of beer or mineral water of equal value;
 - (c) For supper, six ounces of bread, one pint of tea with milk and sugar, two ounces of cheese; and
- (3.) When the soldier is not so entitled to be furnished with a meal, shall furnish the soldier with candles, vinegar, and salt, and allow him the use of fire, and the necessary utensils for dressing, and eating his meat; and

(M.L.)

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- (4.) Shall furnish stable room and ten pounds of oats, twelve pounds of hay, and eight pounds of straw on every day for each horse.

For the purposes of this Part of this Schedule the expression "furnish with lodging" shall include the provision of a separate bed for each officer and soldier.

PART II.

Regulations as to Billets.

(1.) When the troops are on the march the billets given shall, except in case of necessity or of an order of a justice of the peace, be upon victualling houses in or within one mile from the place mentioned in the route :

(2.) Care shall always be taken that the billets be made out to the less distant victualling houses in which suitable accommodation can be found before billets are made out for the more distant victualling houses :

(3.) Except in case of necessity, where horses are billeted, each man and his horse shall be billeted on the same victualling house :

(4.) Except in case of necessity, one soldier at least shall be billeted where there are one or two horses, and two soldiers at least where there are four horses, and so in proportion for a greater number :

(5.) Except in case of necessity, a soldier and his horse shall not be billeted at a greater distance from each other than one hundred yards :

(6.) When any soldiers with their horses are billeted upon the keeper of a victualling house who has no stables, on the written requisition of the commanding officer present the constable shall billet the soldiers and their horses, or the horses only, on the keeper of some other victualling house who has stables, and a court of summary jurisdiction upon complaint by the keeper of the last-mentioned victualling house may order a proper allowance to be paid to him by the keeper of the victualling house relieved :

(7.) An officer demanding billets may allot the billets among the soldiers under his command and their horses as he thinks most expedient for the public service, and may from time to time vary such allotment :

(8.) The commanding officer may, where it is practicable, require that not less than two men shall be billeted in one house.

THIRD SCHEDULE.

s. 113.

IMPRESSMENT OF CARRIAGES.

Table of Rates of Payment for Carriages and Animals.

Carriages and Animals.	Rate per Mile.
<i>In Great Britain.</i>	
A waggon with four or more horses, or a wain with six oxen, or four oxen and two horses.	One shilling.
A waggon with narrow wheels, or a cart with four horses, carrying not less than fifteen hundred-weight.	Ninepence.
Any other cart or carriage, with less than four horses, and not carrying fifteen hundredweight.	Sixpence.
<i>In Ireland.</i>	
For every hundredweight loaded on any wheeled vehicle.	One halfpenny.

The mileage when reckoned for the purposes of payment shall include the distance from home to the place of starting and the distance home from the place of discharge.

Regulations as to Carriages and Animals.

(1.) Where the whole distance for which a carriage is furnished is under one mile the payment shall be for a full mile.

(2.) In Ireland, the minimum sum payable for a car shall be threepence, and for a dray, sixpence per mile.

(3.) In Great Britain, when the day's march exceeds fifteen miles, the justice granting his warrant may fix a further reasonable compensation for every mile travelled, not exceeding, in respect of each mile, the rate of hire authorised to be charged by this Act; when any such additional compensation is granted, the justice shall insert in his own hand in the warrant the amount thereof.

(4.) In Ireland the payment shall be at the same rate for each hundredweight in excess of the amount which the carriage is liable under this schedule to carry.

(5.) A carriage shall not be required to travel more than twenty-five miles.

(6.) A carriage shall not, except in case of pressing emergency, be required to travel more than one day's march prescribed in the route."

(7.) In Great Britain a carriage shall not be required to carry more than thirty hundredweight.

(M.L.)

2 x 2

(8.) In Ireland a carriage shall not be required to carry, if a car, more than six hundredweight, and if a dray more than twelve hundredweight.

9.) The load for each carriage shall, if required, at the expense of the owner of the carriage, and if the same can be done within a reasonable time without hindrance to His Majesty's service, be weighed before it is placed in the carriage.

s. 254.

FOURTH SCHEDULE.

FORM OF DESCRIPTIVE RETURN.

DESCRIPTIVE RETURN of _____ who* at _____ on
the _____ day of _____, and was committed to confinement
at _____ on the _____ day of _____ as a deserter [or
absentee without leave] from the _____ Bn. of the
Regiment of _____.

* After the word "who," to be inserted either the words "was apprehended," or "surrendered himself," as the case may be.

Age	-	-	-	-	-	-	
Height	-	-	-	-	-	-	Feet. Inches.
Complexion	-	-	-	-	-	-	
Hair	-	-	-	-	-	-	
Eyes	-	-	-	-	-	-	
Marks	-	-	-	-	-	-	
In uniform or plain clothes	-	-	-	-	-	-	
Probable date and place of attestation	-	-	-	-	-	-	
Probable date of desertion or beginning of absence, and from what place	-	-	-	-	-	-	
Name, occupation, and address of the person by whom or through whose means the deserter [or absentee without leave] was apprehended and secured.*							
Particulars in the evidence on which the prisoner is committed, and showing whether he surrendered or was apprehended, and in what manner and upon what grounds. The fullest possible details to be given.							

I do hereby certify that the prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he†

the before-mentioned corps, and I recommend‡ for a reward of s.

_____*Signature* } of committing
 _____*Residence* } magistrate.
 _____*Post Town* }
 _____*Signature of prisoner.*
 _____*Signature of informant.*

Or where the prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming:

I hereby certify that the above-named prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the day of _____ for the purpose of obtaining such evidence from a Secretary of State.

_____*Signature.*
 _____*Residence.*
 _____*Post Town.*

* It is important for the public service, and for the interest of the deserter or absentee without leave, that this part of the return should be accurately filled up, and the details should be inserted by the justice in his own handwriting or, under his direction, by his clerk.

† Insert is or is not a deserter or absentee without leave from or belongs or does not belong to, as the case may be.

‡ The justice will insert the name of the person to whom the reward is due, and the amount [5s., 10s., 15s., or 20s.] which, in his opinion, should be granted in this particular case.

FIFTH SCHEDULE

ACTS REPEALED.

[Repealed.]

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RULES OF PROCEDURE, 1907.

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1. The special report of the necessity for further delay in ordering a court-martial to assemble for the trial of an officer or soldier required under section 45 of the Army Act, shall be made by means of a letter from the commanding officer of that officer or soldier reporting the necessity to the general or other officer to whom application would be made to convene a court-martial for the trial of that officer or soldier.¹

Report of delay of trial under Army Act, s. 45.

1. See generally as to r.r. 1-8, Ch. IV, and K.R., 468, *et seq.*

This rule prescribes the manner in which the special report required by A.A. 45 is to be made. A similar report must be furnished weekly until the accused is released or a court-martial assembled; and on the receipt of every such report, the general or other officer to whom it is sent must satisfy himself as to the necessity for the continued retention of the accused in custody; K.R., 464. This special report is not required on active service.

Power of Commanding Officer.

2. Every commanding officer¹ will take care that a person² under his command, when charged with an offence, is not detained in custody for more than forty-eight hours after the committal of that person into custody is reported to him, without the charge being investigated³, unless investigation within that period seems to him impracticable with due regard to the public service. Every case of a person being detained in custody beyond a period of forty-eight hours, and the reason thereof, shall be reported⁴ by the commanding officer to the general or other officer to whom application would be made to convene a court-martial for the trial of the person charged.

Duty of commanding officer as to investigation of charge for offence.

1. See r. 129 and note.—A commanding officer who unnecessarily detains a person in arrest or confinement, exposes himself to a charge under A.A. 21(1).

2. This Rule applies to officers as well as soldiers.

3. See A.A. 45 (5). The rule means that the investigation must be commenced within the time specified, though it may be impossible to complete it within that time. As to exclusion of Sunday, Good Friday, and Christmas Day, see r. 135 (A).

4. The report should be made by letter, and should refer specifically to the case, and state the reasons justifying the detaining of the accused in custody and preventing the investigation. The absence of an important witness would justify a remand; or the accused might be ordered to return to his duty, with a distinct intimation that his case will be investigated so soon as the absent witness can be obtained; K.R., 490.

3. (A) Every charge against a soldier will be heard¹ in the presence of the accused. The accused² will have full liberty to cross-examine any witness against him, and to call any witnesses and make any statement³ in his defence. On the application of the accused, he and his wife may be called as witnesses, subject to the provisions of Rule 80.

Hearing charge.

(B) If the accused demands that the evidence against him be taken on oath, the oath will be administered to each witness by

the investigating officer⁴ in the same form⁵ as provided for a court-martial, or, in the case of a witness allowed before a court-martial to make a solemn declaration⁶, the like solemn declaration will be made before the investigating officer.

1. As to the mode of conducting the investigation, see Ch. IV, paras. 18-28; and K.R., 483-491. The Army Act and Rules do not require the investigation to be by the commanding officer, but do make him responsible for the decision; A.A. 46 (1). The evidence is not taken in writing, and, therefore, in the case of a remand, must be taken in writing afterwards as directed by r. 4.

2. The accused may on his own application give evidence himself or call his wife as a witness (see r. 80, which will apply to the evidence of the accused and his wife at this and every other stage of the proceedings). The accused's evidence will or will not be on oath, according as the evidence of the other witnesses is or is not on oath.

3. The right of the accused to make a statement will not be prejudiced by the fact that he has given or intends to give evidence himself, whether on oath or not.

4. This applies to all cases with which the O.O. has power to deal summarily.

5. See r. 82.

6. See A.A. 52 (4), and r. 82 (D).

Disposal of the charge or adjournment for taking down the summary of evidence.

4. (A) The commanding officer will dismiss a charge brought before him if in his opinion the evidence does not show that some offence under the Army Act¹ has been committed, or if, in his discretion, he thinks the charge ought not to be proceeded with².

(B)³ At the conclusion of the hearing of a charge, if the commanding officer is of opinion that the charge ought to be proceeded with, he shall, without unnecessary delay⁴, either—

- (1) dispose of the case summarily; or
- (2) refer the case to the proper superior military authority⁵; or
- (3) adjourn the case for the purpose of having the evidence reduced to writing.

Provided that the commanding officer shall not dispose of a case summarily unless the accused is a soldier, or if the accused, being a soldier, has elected (under Section 46 of the Army Act) to be tried by a district court-martial.

(c)⁶ Where the case is so adjourned, at the adjourned hearing the evidence of the witnesses who were present and gave evidence before the commanding officer, whether against or for the accused, shall be taken down in writing⁷ in the presence of the accused before the commanding officer or such officer as he directs.

(d)⁸ The accused may put questions in cross-examination to any witness, and the questions with the answers shall be added in writing to the evidence taken down.

(e)⁹ The evidence of each witness when taken down, as provided in (c) and (d), shall be read over to him, and shall be signed by him, or, if he cannot write his name, shall be attested by his mark and witnessed. Any statement⁸ of the accused material to his defence shall be added in writing.

1. Every offence which a person subject to military law can commit is an offence against the Army Act, because it is either a military offence or a civil offence. If it is a civil offence, it is provided for by s. 41; if it is a military offence, it is either particularly specified in the Act, or is an act to the prejudice of good order and military discipline under s. 40. Where the act done is not a civil offence, and is not specified in the Act, the commanding officer must consider whether it is or not to the prejudice of good order and military discipline, as, if not, the charge must be dismissed. He must also consider whether, having regard to the limitations of time prescribed by A.A. 158 (1), 161, the accused is liable to be proceeded against; see K.R., 483.

2. If the commanding officer is of this opinion, on account either of the evidence being doubtful, or of the triviality of the case, or of the good character of the accused, or of a doubt whether the act done is to the prejudice of good order and military discipline, or as a matter of discretion, for any reason, he must dismiss the case; A.A. 46; K.R., 488. To make an entry against the man without punishment is not dismissal of the case. The case must also be dismissed if the man has been previously acquitted or convicted of the offence by his commanding officer, or by any court, military or civil; A.A. 46 (7), 157, 162 (6). No particular time is fixed within which a commanding officer must dispose of a case, so that he can always carefully consider a difficult case; but as a rule he should decide immediately, and should never delay for more than a day, unless further evidence is required.

3. Of the three alternative courses specified in this paragraph a commanding officer—

will adopt the first alternative (subject in the case of a non-commissioned officer to the provisions of K.R. 493 (vi) and (vii) and 499), unless (a) he thinks the case is one for trial by court-martial, or (b) the accused elects to be tried by district court-martial, or (c) the case is one which under K.R. 487 he is required to refer to superior military authority. Certain cases of drunkenness he is *bound* to deal with summarily; A.A. 46 (8);

will adopt the second alternative where the case is one which he thinks should be disposed of summarily, but which cannot be so dealt with under K.R. 487 without reference to superior authority;

In any other case will adopt the third alternative.

The final decision of the commanding officer as to whether the case should be tried by court-martial is deferred until the evidence has been taken down in writing and considered by him. A summary is to be made whether it is intended to remand the accused for trial by a regimental or by district or general court-martial.

4. As to the course to be followed, where sufficient evidence is not forthcoming at the investigation, or where a second offence is disclosed during the investigation, see K.R. 490, 491. The adjourned hearing for reducing the evidence to writing should, if possible, be held the same day as the investigation.

5. See r.r. 134 (A), 135 (B).

6. For power to dispense with paras. (c), (d) and (e), see r. 104.

7. The C.O., on adjourning the case for the purpose of having the evidence reduced to writing, may direct another officer to take down the evidence. But an officer who has given material evidence at the investigation must not be appointed for this purpose. At the adjourned hearing the accused must be allowed to put any reasonable question to a witness, and especially to put questions respecting any variance between the evidence taken down and that given before the C.O., such, e.g., as would arise if the witness's answers in cross-examination before the C.O. were omitted. In reducing the evidence to writing immaterial statements may be omitted, and all hearsay or irrelevant matter should be excluded. If the accused or his wife has given evidence before the C.O. under r. 3, he or she may, on the application of the accused, and subject to the provisions of r. 80, give evidence, to be taken down in writing and inserted in the summary like the evidence of other witnesses under this rule, but neither he nor she can, in the absence of such an application, be compelled to repeat the evidence previously given. If either of them does give evidence under this rule, that evidence may be used in the like manner and for the like purposes as the evidence of other witnesses. Therefore, before the application of the accused is entertained, he should be warned of the use to which the evidence of himself and his wife, as taken down in the summary, may be put.

8. If the accused has made a statement, whether in addition to or in lieu of giving evidence under r. 3, the material parts of his statement are to be added, but it will be advisable usually to take down fully any statement he makes; he cannot be required to sign it. The statement of an accused person can only be given in evidence at the trial if it is voluntary (see Oh. VI, paras. 74 to 81). Before, therefore, an accused person makes any statement, he should be warned that he is not bound to say anything, and that any statement he makes may be used as evidence against him; and, if he is asked for his defence, a similar warning should be given to him; but if the statement was made voluntarily the mere fact that the warning was not given will not prevent the statement being used as evidence. In no case must he be authoritatively called on to account for his proceedings, or required to make any statement, or asked

any questions; the answer to any such question will not be admissible in evidence against him. See also Memoranda for Guidance of Courts-Martial, p. 702 *et. seq.*

Remand of
accused.

5 (A) The evidence and statement (if any) taken down in writing in pursuance of Rule 4 (in these rules referred to as the summary of evidence) shall be considered by the commanding officer,¹ who thereupon shall either—

- (1) remand the accused for trial by court-martial²; or
- (2) refer the case to the proper superior military authority; or
- (3) if he thinks it desirable, and the accused is a soldier and has not himself elected to be tried by a district court-martial, rehear the case and dispose of it summarily.

(B) If the accused is remanded for trial by court-martial, the commanding officer shall without unnecessary delay³ either issue an order for the assembly of a court-martial, or apply⁴ to the proper military authority to convene a court-martial, as the case requires; this delay, and any delay in the reference to superior military authority, should not ordinarily exceed 36 hours⁵.

(C) The summary of evidence⁶, or a true copy thereof, shall be laid before the court-martial before whom the accused is tried on the assembly of the court.

1. The C.O. is to consider the evidence after it has been reduced to writing, and should be careful to note whether or not the evidence taken down in the summary corresponds to that given before him at the investigation. On the evidence being reduced to writing a different aspect may be given to the case; if so, the C.O. may, if the case is within his jurisdiction and the accused has not elected (under A.A. 46 (8)) to be tried by a district court-martial, re-hear the case, and if he thinks fit, dispose of it summarily. The C.O. can dismiss the case on re-hearing it.

2. If the C.O. determines to remand the accused for trial by court-martial, he will have to consider by what class of court-martial the accused should be tried. Usually, if the accused is not dealt with summarily, application should be made for a district court-martial. The application (like the charge-sheet) must be signed by the officer in actual command of the unit to which the accused belongs.

3. The order for a regimental court-martial should as a rule be issued so as to admit of the court assembling next day, care being taken to allow the interval of eighteen hours required by r. 14 (A).

4. For form of application for court-martial see p. 727. See also Memoranda for Guidance of Courts-Martial, p. 702 *et. seq.*

5. As to exclusion of Sunday, &c., in reckoning time, see r. 135 (A).

6. Where the accused is charged with several offences, the evidence in relation to each offence should be kept, so far as possible, distinct. As to the summary of evidence at the trial, see r. 17 (E) and note. The accused is entitled to have a copy of the summary gratis; see r. 14 (B).

Summary
award of
punishment
by com-
manding
officer.

6. (A) The term of detention when awarded by a commanding officer in days shall begin on the day of the award. The term of detention when awarded by a commanding officer in hours shall begin at the hour when the soldier sentenced is received at the detention barrack or branch detention barrack to which he is committed, or if he has not been sooner received into the detention barrack or branch detention barrack, shall begin on the day after the day of the award at the hour fixed for the commitment and release of soldiers under sentence¹.

(B) When the commanding officer has once awarded punishment for an offence, he cannot afterwards increase the punishment for that offence².

1. C.O.'s must bear in mind the regulations as to summary award of punishments; K.R., 498-507; and as to drunkenness; K.R. 508-518. See also Ch. IV, paras. 81-88.

A C.O. will award his sentence, up to seven days, in hours, but if exceeding seven days, in days; K.R., 494. In law (in the absence of special provision) there is no division of a day, and, therefore, however late in the day a soldier under sentence is committed, his term of detention is considered to have commenced at the first minute of that day, that is, the first minute after midnight. Where, therefore, the sentence is awarded in days, the sentence will begin on the first minute of the day of the award. But where a sentence is awarded in hours, the detention by virtue of this rule will not commence until the hour at which the soldier is received into the detention barrack or branch detention barrack, or if he is not received into a detention barrack or branch detention barrack on the day following the date of the award, then it will commence at the hour fixed for the commitment of soldiers under sentence on the day after the day of the award. This rule will, therefore, allow a C.O., when there is no accommodation in the branch detention barrack, to postpone the commitment of the soldier for one day, and to keep him in the guard detention room without his term of detention beginning to run, till the usual hour of commitment on the next day after the detention is awarded, whether Sunday or not (see r. 135 A). If, however, he is kept longer in the guard detention room, but is ultimately committed to a detention barrack, his term of detention will so begin to run, and, if not committed to a detention barrack at all, the detention begins to run from the usual hour of commitment on the day of award. It must be recollected that a soldier's pay cannot be stopped after having been awarded detention for any day on which he is in custody, before his detention begins to run under this rule.

2. The award is considered final when the soldier has been removed from the presence of the C.O. The C.O. can at any time diminish the punishment before its completion, though he cannot add to it.

As to entry of award or decision of C.O. in each case, see K.R., 485, 507.

7. (A) If a soldier is dealt with summarily by his commanding officer and the award or finding involves a forfeiture of pay, or (though such forfeiture is not involved) the award is not an award of a minor punishment¹, and his commanding officer has omitted to ask him² whether he desires to be dealt with summarily or to be tried by a district court-martial, the soldier may, at any time on the same day before the hour fixed for the commitment and release of soldiers under sentence, claim his right to be tried³ by a district court-martial.

Right of trial by court-martial in lieu of summary award.

(B) Except as mentioned in sub-section (8) of section 46 of the Army Act and in this rule, a soldier has no right to claim a trial by court-martial.

1. See K.R., 493 (iv), (v), (vi), (vii).

2. A C.O. should of course never omit to put to the soldier the question which he is directed to put by A.A. 46 (8); but in the case of such an omission the soldier may claim a court-martial within the time mentioned in this rule.

3. See Ch. V. para. 80, as to punishment in such a case.

8. (A) Where an officer is charged with an offence under the Army Act the investigation shall, if he requires it, be held, and the evidence taken in his presence in writing, in the same manner, as nearly as circumstances admit, as is required by Rules 3 and 4, in the case of a soldier¹.

Procedure on charge against officer.

(B) Where an officer is ordered for trial by court-martial without any such taking of evidence in his presence, an abstract of the evidence to be adduced shall be delivered to him gratis not less than twenty-four hours before his trial, and shall be laid before the court-martial on the assembly of the court².

1. The effect of this provision is to give the C.O. the option of dispensing with any public proceeding preliminary to trial, unless the accused officer demands it. It does not preclude the C.O. from calling the officer before him and investigating the case as he may deem necessary. The officer, however, can only demand the formal investigation of his case by the C.O., and has no right under this rule to demand a court of inquiry.

2. The convening officer will be responsible for the preparation and furnishing of this abstract, which should not be too much in detail. It should always be delivered as a matter of course, even though the subject matter of the charge may previously have been investigated by a court of inquiry; and if a court of inquiry has been held, the officer may have a copy of its proceedings; see r. 124 (M).

Where there are several charges, the abstract should be divided so as to correspond to each charge.

For the power to dispense with observance of this rule on the ground of military exigencies, or the necessities of discipline, see r. 104.

Framing Charges.

Charge-sheet and charge.

9. (A) A charge-sheet contains the whole issue or issues to be tried by a court-martial at one time.

(B) A charge means an accusation contained in a charge-sheet that a person amenable to military law has been guilty of an offence.

(C) A charge-sheet may contain one charge or several charges.¹

1. The convening officer is by r. 17 made responsible for the charge, which in practice is usually framed by the adjutant, or some other officer under the direction of the convening officer. The charge-sheet must be signed by the officer in actual command of the unit to which the accused belongs.

Commencement of charge-sheet.

10. Every charge-sheet will begin with the name and description¹ of the person charged, and should state, in the case of an officer, his rank, and name, and corps (if any), and in the case of a soldier, his number, rank, and name, and corps (if any), and where he does not at the time of the trial belong to the regular forces, should show by the description of him, or directly by an express averment, that he is amenable to military law² in respect of the offence charged.

1. As to materiality of name and description, see r. 12 and note.

2. As an officer or soldier of the regular forces is always subject to military law, a statement that the accused belongs to a battalion composed of the regular forces, will be sufficient to aver, and evidence of his so belonging will be sufficient to prove, without expressly adding the words, that he is subject to military law. If the accused belongs to the reserves, or to the territorial force, the charge must state, and the court must by evidence or from their military knowledge be satisfied, that he was at the time of the offence subject to military law. (See also Note on p. 676. See, however, Reserve Forces Act, 1882, ss. 6 and 15.) If he is a civilian, or if his name and position are unknown, as may happen in the case of active service, the charge should expressly aver that he was subject to military law, although it will be sufficient if the description of the accused is such as to imply that he was so subject. Evidence must be given of the fact, as, for instance, that he was a sutler, or the holder of a pass from the officer in command, or that he was found in camp, or in such circumstances as to show that he was subject to military law. See specimen charge-sheet, No. 9, p. 661.

Contents of charge.

11. (A) Each charge¹ should state one offence only,² and in no case should an offence be described in the alternative³ in the same charge.

(B) Each charge should be divided into two parts—

(1) The statement of the *offence*; and,

(2) The statement of the *particulars* of the act, neglect, or omission constituting the offence.

(C) The offence should be stated, if not a civil offence, in the words of the Army Act⁴, and if a civil offence, in such words as sufficiently describe that offence, but not necessarily in technical words⁵.

(D) The *particulars* should state such circumstances respecting the alleged offence as will enable the accused to know what act, neglect, or omission is intended to be proved against him as constituting the offence⁶.

(E) The *particulars* in one charge may be framed wholly or partly by a reference to the particulars in another charge⁷, and in that case so much of the latter particulars as is so referred to shall be deemed to form part of the first-mentioned charge as well as of the other charge.

(F) Where it is intended to prove any facts⁸ in respect of which any deduction from ordinary pay can be awarded as a consequence of the offence charged, the *particulars* should state those facts.

1. For Forms of Charges, and Preliminary Notes as to their use, see pp. 650-659 and 646. See also Memoranda for guidance of Courts-Martial, p. 702 *et seq.*

2. A single transaction, although technically disclosing more than one offence, should not as a rule be made the subject of more than one charge. For instance, where violence to a superior is accompanied by insubordinate language, the violence alone should be charged, the language being admissible in evidence as to the intent. On the other hand, larceny of goods the property of separate owners should not be included in one charge.

3. Although the description of an offence in the alternative in the same charge would make the charge bad, it does not therefore follow that the word "or" is never to appear in the charge. For instance, a charge under A.A. 15 of "when in garrison, being found beyond the limits fixed by general orders without a pass or written leave from his commanding officer" is a good charge, because in this case he is not charged with one offence or the other, but with a single offence, which is constituted by his having neither a pass nor written leave. If in the charge the words "beyond the limits fixed by general or garrison orders" were used, the charge would be a bad charge, because it might be one offence to be beyond the limits fixed by general orders, and another offence to be beyond the limits fixed by garrison orders.

4. Under r. 134 (B), this will include the words of any other Act creating the offence, such, for instance, as the Acts relating to the reserve or auxiliary forces. Where the offence is under any such Act, care must be taken to observe this rule. See Note as to use of Forms of Charges (25), p. 648.

5. When offences against civil law are tried by court-martial under A.A. 41 although technical terms need not be used in the charge, the essence of the civil offence must be expressed—e.g., in a case of damaging property, the charge must aver the damage to have been done "maliciously."

6. If of the acts or omissions indicated in the particulars sufficient are not proved to constitute the offence charged, but nevertheless other acts and omissions not so indicated but sufficient to constitute the offence are proved the accused is entitled to be acquitted of the charge, but may be detained in custody and be tried anew in respect of the last-mentioned acts or omissions. For instance, if the accused is charged with having been absent without leave, in that he was absent from his unit without leave on Aug. 10, 11, and 12, and he proves that on those three days he was in barracks on duty, but it appears from the evidence that he was absent without leave on Aug. 21, the date is so material as to amount to a new charge, and the accused must be acquitted, though he may be tried by another court-martial on a new charge of being absent without leave on Aug. 21. In such a case a special finding is of no avail, as it cannot introduce new material particulars not mentioned in the charge. See note 3 to r. 44.

If, however, he were charged with being absent from Aug. 10, to Aug. 21 and it is proved that he was absent during that time, but that his absence began on the 1st and he was apprehended on the 23rd, he may be convicted, as the material part of the charge, absence from Aug. 10-21, is proved.

When there is such a divergence between the head of charge and the statement of the particulars that each in substance discloses a different offence, the charge is bad, and a conviction, even on a plea of guilty, could not be upheld. But the incidental mention of a separate offence in the particulars would not of itself invalidate the charge. A charge of desertion in which the particulars alleged that the accused broke out of barracks on a certain day, and was absent without leave for a certain time, was held to be good, inasmuch as these facts were mentioned as incidents of the offence charged, and the accused was still distinctly informed that the charge he had to meet was one of desertion. So was a charge of desertion (in which the duration of the absence was an element) where the particulars stated that the

accused absented himself without leave for the time stated. Where the head of charge discloses no offence, but the statement of particulars does, and with sufficient precision to inform the accused of his offence, a conviction of the offence disclosed in the particulars was, notwithstanding the irregularity, held good.

7. See, e.g., specimen charge-sheet No. 59, p. 670. If in such cases the persons charged were to be acquitted of the first charge and convicted on the second charge, the conviction when recorded should specify the place and date mentioned in the first charge.

8. If these facts are stated in the charge, evidence must be given by the prosecution to show the amount which ought to be deducted from the pay of the accused; see note as to use of Forms of Charge (28), p. 648.

As to evidence of value, see note to A.A. 138 (4).

Validity of
charge-
sheet.

12. (A) A charge-sheet shall not be invalid by reason only of any mistake in the name or description of the person charged¹, if he does not object to the charge-sheet during the trial, and it is not shown that injustice has been done to the person charged.

(B) In the construction of a charge-sheet or charge there shall be presumed in favour of supporting the same every proposition which may reasonably be presumed to be impliedly included, though not expressed therein².

1. Although the trial of an offender is not invalid on account of a mistake in a name, such mistakes are dangerous, in so far as they may lead to mistakes of substance. For instance, the accused might thus be mistaken for a man named in a certificate of previous conviction or in the conduct book, and a mistake of this description might cause the invalidity of the whole proceeding. Where, however, a man has enlisted and is commonly known under an assumed name, he may be described by that name. The court has power to amend the charge sheet by correcting, under r. 38 (A), any mistake in the name or description of the accused.

2. The object of this paragraph is purely legal, and does not touch the duties of an officer. If the proceedings were questioned in a court of law it would require that court to presume matters which, though not stated in the charge, were necessary to support its validity.

Preparation for Defence by Accused Person.

Oppor-
tunity for
accused to
prepare
defence.

13. An accused person for whose trial a court-martial has been ordered to assemble shall be afforded proper opportunity of preparing his defence, and shall be allowed free communication¹ with his witnesses,² and with any friend or legal adviser³ with whom he may wish to consult⁴.

1. The freest communication which is consistent with good order and military discipline and with the safe custody of the accused should be allowed. A failure to give the accused full opportunity of preparing his defence, and free communication with others for the purpose, may invalidate the proceedings.

2. The accused is not bound to call as a witness everyone with whom he communicates with reference to giving evidence.

3. As to friend of accused in court, see r. 87; and as to counsel rr. 88-94. As to the right of the accused to consult the judge-advocate on questions of law, see r. 103 (A).

4. For power to dispense with this rule, see r. 104.

Informa-
tion of
charge and
delivery of
summary of
evidence
and list of
officers to
accused.

14. (A) The accused, before he is arraigned,¹ should be informed by an officer² of every charge on which he is to be tried; and also that, on his giving the names of any witnesses whom he desires to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly³; the interval between his being so informed and his arraignment should not be less, in the case of a regimental court-martial, than eighteen, and in the case of any other court-martial, than twenty-four hours.

(B) The officer,³ at the time of so informing the accused, should give the accused a copy of the charge-sheet,⁴ and, where the accused

is a soldier, should, if necessary, explain the charge-sheet and charges to him, and should also, if he is illiterate, read the charges to him.

The officer⁴ will, at the same time, give to the accused gratis a true copy of the summary of evidence.⁵

(c) A list of the names, rank, and corps (if any), of the president and officers who are to form the court, and where officers in waiting are named, also of those officers, should, as soon as the president and officers are named, be delivered to the accused if he desires it.⁶

(d) If it appears to the court that the accused is liable to be prejudiced by any non-compliance with this rule, the court should take steps, and, if necessary, adjourn to avoid the accused being so prejudiced.

1. See Ch. V, para. 49.

2. The prosecutor will usually be the officer on whom the duty of complying with the provisions of this rule 14 devolves; when he is not, he should, before the trial, satisfy himself that it has been complied with. Compliance with this rule, as well as with r. 13, may be dispensed with on the ground of military exigencies, or the necessities of discipline, by virtue of r. 104; but in every case the accused must have information of the charge, and opportunity of calling his witnesses.

3. By r. 78 (A) the convening officer, or, after the assembly of the court, the president of the court, is required to take the proper steps to procure the attendance of witnesses whom the accused desires to call. C.O.'s will therefore take care that any request of the accused for witnesses shall be transmitted to the convening officer, or, after the court is convened, to the president of the court. The request of an accused person should only be refused if it is quite clear that the evidence of the witness will be immaterial, or if it is impossible to secure the attendance of the witness within a reasonable time. Any refusal of his request should be communicated to the court, with the reasons for the refusal, and the court will deal with the matter under (D). See also r. 77.

In the case of an essential witness the court should always adjourn for the purpose of enabling him to attend, as the absence of such a witness may cause the proceedings to be invalid.

4. A copy of the charge-sheet must always be given, unless this rule has been suspended under r. 104. Even where it is so suspended, the full charge must be clearly explained to the accused, as otherwise he has not proper opportunity to make his defence. If the accused objects to the charge he will have an opportunity of making his objection when called on to plead; r. 32.

5. The accused must also be given gratis a copy of the summary of evidence, except in a case where this rule has been suspended.

6. In the case of a general court-martial, this list should invariably be delivered, although a request is not made. In the case of a district court-martial also, the list should be delivered, notwithstanding the absence of a request, if there is any reason to suppose from the circumstances of the case that the accused may reasonably object to any member of the court.

15. Any number of accused persons may be tried together for an offence charged to have been committed by them collectively,¹ but in such a case notice of the intention to try the accused persons together should be given to each of the accused at the time of his being informed of the charge,² and any accused person may claim, either by notice to the authority convening the court, or, when arraigned before the court, by notice to the court, to be tried separately, on the ground that the evidence of one or more of the other accused persons proposed to be tried together with him will be material to his defence;³ the convening authority or court, if satisfied that the evidence will be material, and if the nature of the charge⁴ admits of it, shall allow the claim, and the person making the claim shall be tried separately.

Joint trial
of several
accused
persons.

1. As to swearing of court to try several accused, see r. 71 and note.
2. Each of the accused should also be told that, if he gives evidence himself, and in doing so gives evidence against any of the other persons charged with the same offence, he will be liable to be cross-examined as to character. But this liability will not of itself entitle the accused to claim to be tried separately.
3. It must be remembered that though each of the accused is a competent witness, none of the other persons charged with the same offence can compel him to give evidence.
4. In the case of conspiring to cause a mutiny, or joining in a mutiny, the essence of the charge is combination between the accused. In such a case the nature of the charge may not admit of their being tried separately. In cases of doubt, the accused should be tried separately.

Convening of Court-Martial.

Convening
of regi-
mental
court-
martial.

16. A regimental court-martial¹ shall be ordered to assemble as soon as seems to the convening officer practicable² (having regard to Rule 14 (A)), after the completion of the investigation by the commanding officer into the charge which the court-martial is to try³.

1. See A.A., s. 47; K.R., 559. Regimental courts-martial should now be of rare occurrence as the C.O. has ample powers of summary award to deal with most offences, and it has been laid down that, for cases not summarily disposed of, a district court-martial should as a rule be convened.

2. A regimental court-martial should assemble as soon as possible after the interval which is required by r. 14 (A) between the accused being informed of the charge and the meeting of the court. Where, therefore, that rule is suspended by an order under r. 104, the court should assemble immediately.

3. See generally as to the convening and composition of regimental courts-martial, A.A. 47 and 50 (2) and rr. 19-21.

Procedure
of officer on
convening
court-
martial.

17. (A) An officer before convening a court-martial¹ should first satisfy himself that the charges to be tried by the court are for offences within the meaning of the Army Act, and that the evidence justifies a trial on those charges, and if not so satisfied should order the release of the accused, or refer the case to superior authority.²

(B) He should also satisfy himself that the case is a proper one to be tried by the description of court-martial which he proposes to convene.

(C) If more than fifteen days in the United Kingdom, or more than thirty days elsewhere, elapse between the time when an officer having power to convene a general or district court-martial receives an application for a court-martial, and the date at which the case is disposed of, either by the assembly of a general or district court-martial, or otherwise, the officer shall report the case, and the reasons for the delay, if elsewhere than in India, to the Army Council, and if in India to the Commander-in-chief of the forces in India.

(D) The officer convening a court-martial shall appoint or detail the officers to form the court,³ and may also appoint or detail such waiting officers⁴ as he thinks expedient.

(E) The officer convening a court-martial shall send to the officer appointed president the original charge-sheet on which the accused is to be tried, and the summary or abstract of evidence.⁵

1. With respect to the duties of the convening officer, see further. Ch. V, paras. 28-33 and K.R., 547-571.

Except in the case of a regimental court-martial, the C.O. of the accused who has investigated the charge or remanded the accused for trial cannot afterwards act as convening officer in the same case, but must refer it to a superior authority.

2. In the case of a general court-martial in the United Kingdom, the charge-sheet and summary of evidence should invariably be submitted by the convening officer to the Judge Advocate-General before the court is convened (see also r. 101 (A) and note).

8. The convening officer must state in the order convening the court his opinion—

- (1) as to the rank of the president (see A.A., 47 (4), 48 (9));
- (2) as to the rank of members (r. 21); (see also K.R. 577).
- (3) as to members belonging to different corps or regiments (r. 20).

The opinion as to military exigencies dispensing with certain rules (see r. 104) should be in a separate order, signed by the convening officer.

See generally as to a general or district court-martial, the number of members and their qualification and rank, and the rank of the president, A.A., 48, 50, 182 (4); rr. 19-21; K.R. 576, 578. Whenever a general officer or colonel is available to sit as president of a general court-martial, an officer of inferior rank is not to be appointed. K.R., 578 (i).

Under A.A. 53 a court-martial which after the commencement of the trial is reduced below the legal minimum, is dissolved. K.R. 576, therefore points out that where the trial is likely to be prolonged it is desirable to form a general court-martial of more than the legal minimum, in order that the court may not be dissolved if one member fails through illness or otherwise. In such case not less than thirteen officers should usually be appointed, or if thirteen cannot conveniently be assembled, eleven. In the case of a district court-martial it will seldom be necessary to appoint more than the legal minimum, as it is unusual for a trial before a district court-martial to extend beyond two days, and little inconvenience will usually arise from the dissolution of the court, as if the proceedings have not been concluded, the accused can be tried by another court.

4. It will usually be desirable, in the case of a general court-martial where the trial is likely to be prolonged, to add two or more waiting officers, in order to fill the places of officers retiring on a challenge, and the same course will not infrequently be expedient in convening a district court-martial; K.R., 576.

5. The order for the assembly of the court-martial should also be sent. The notes to the Form of Application for a court-martial (p. 727) show how the convening officer should deal with the various documents transmitted to him.

The object of this paragraph is to enable the original charge-sheet to be annexed to the proceedings, and also to enable the president of the court-martial to examine, before the court meets, the charge-sheets and summary of evidence in the different cases, so that he may have a general knowledge of the cases which are to come before the court. If any amendment in the charges appears to him to be required he should communicate with the convening officer before the trial begins; see r. 5 (C).

Where the accused pleads guilty the summary of evidence may be used for determining the sentence; r. 37 (B). Otherwise the summary of evidence may be used at the trial for the purpose of showing that the witness has contradicted himself or has made a particular statement; and during the trial the president should compare the evidence given by each witness with his statement contained in the summary of evidence, and if there is any material variance should question the witness respecting the variance.

The summary of evidence cannot otherwise be used as evidence, and if the witness is absent, must not be read or referred to by the court so far as it relates to that witness. Great care must be taken by the members of the court not to be biased in any way by the statements in the summary of evidence, except so far as they affect the credibility of the witness by showing that he has contradicted himself; indeed, it may usually be expedient that no one but the president should refer to the summary.

Any statement (but not the evidence) of the accused contained in the summary of evidence, if not taken contrary to the directions in note to r. 4 (C)-(E), may, and usually should, be read to the court as evidence, whether it is in favour of or against the accused.

Where the accused pleads guilty, the summary of evidence is to be annexed to the proceedings (see Form of Proceedings, para. (4), p. 683). If the accused pleads not guilty, the summary will be enclosed with the proceedings when sent to the confirming officer; it need not, however, be annexed to the proceedings unless there is a material variance between the statement of any witness in the summary and his evidence at the trial.

Abstract of Evidence. See r. 8 (B).

Adjournment for insufficient number of officers.

18. (A) If before the accused is arraigned the full number of officers detailed are not available to serve, by reason of non-eligibility, disqualification, challenge, or otherwise, and if there are not sufficient officers in waiting to take the place of those unable to serve the court should ordinarily adjourn for the purpose of fresh members being appointed;¹ but if the court are of opinion that in the interests of justice, and for the good of the service, it is inexpedient so to adjourn, they may, if not reduced in number below the legal minimum, proceed, recording their reasons for so doing.

(B) If the court adjourns for the purpose of the appointment of a new president,² or of fresh members,³ whether under these rules or otherwise, the convening officer may, if he thinks fit, convene another court.

1. A court for which, say, thirteen members have been detailed, will not ordinarily begin the trial with less than thirteen, although they may proceed, unless reduced below the legal minimum (see notes to rr. 16, 17). The court should always adjourn unless there are strong reasons against it.

If at any time the number of officers is, from whatever cause, below the legal minimum, or the president is absent (r. 65 (B)), there is no court; if the proceedings under r. 22 are not begun, no court can be formed; if they are begun they must immediately cease. In either case a report of the circumstances should be made to the convening officer by the president, or, if he is absent, by the senior officer present.

2. This will apply if the president is found to be ineligible or disqualified (rr. 19, 22), or not to be of the required rank (r. 22 (A) (iv)), or if an objection to the president is allowed (A.A., 51 (3), and r. 25), or if the president cannot attend (A.A., s. 53 (2)).

3. The court will adjourn in the circumstances mentioned in para. (A), as to which see rr. 19, 22, and 25, and A.A., 51. After the trial has once begun, fresh members cannot be appointed in any circumstances, A.A., s. 53 (1).

Ineligibility and disqualification of officers for court-martial.

19. (A) An officer is not eligible¹ for serving on a court-martial if he is not subject to military law.

(B) An officer is disqualified² for serving on a court-martial if he—

- (i.) Is the officer who convened the court; or
- (ii.) Is the prosecutor or a witness for the prosecution; or
- (iii.) Investigated the charges before trial, or took down the summary of evidence, or was a member of a court of inquiry respecting the matters on which the charges against the accused are founded, or was the company, &c., commander who made preliminary inquiry into the case; or
- (iv.) Is the commanding officer of the accused, or of the corps or battalion to which the accused belongs; or
- (v.) Has a personal interest³ in the case.

(c) An officer is not eligible to serve on a court-martial unless he has held a commission during not less than the following periods, that is to say:—

- (i.) If it is a regimental court-martial, one whole year;
- (ii.) If it is a district court-martial, two whole years;
- (iii.) If it is a general court-martial, three whole years.⁴

1. *Eligible* is used with reference to an officer being subject to military law, and of the necessary standing. It refers, in point of fact, to the status of the officer, and involves no personal considerations.

2. *Disqualified*, on the other hand, is used with reference to personal disqualification on the part of an officer.

It will be observed that most of the disqualifications are also contained in A.A., 50 (2), (3); see note on that section.

Except so far as provided by r. 20, the corps to which an officer belongs is immaterial as regards his eligibility or qualification to serve on a court-martial; A.A. 50 (1).

3. This will extend to even a remote or very small interest; e.g. in a charge relating to the embezzlement of a sum, however small, belonging to the regimental mess, every officer of that mess has a personal interest, and is therefore disqualified. A remote or even a merely technical interest has been held to disqualify a person in a judicial position, e.g. a person who holds as trustee or otherwise on behalf of others money in which he has no beneficial share himself, nevertheless has a personal interest in any charge relating to that money.

4. Para. (c) is taken from A.A., 47 (2), 48 (3) (4). In addition an officer is not, when it can be avoided, to be detailed to sit on a court-martial unless he has previously attended as a supernumerary at least twenty-five times, and is, in the opinion of his C.O. competent; K.R., 572. When the number is three, not more than one member is to be a subaltern officer. In doubtful or complicated cases the court should still, when possible, consist of five officers.

Where a new trial is ordered no officer should be a member of the court who sat on the court at the previous trial.

20. (A) A general or district court-martial shall, as far as seems practicable, be composed of officers of different corps, and in no case shall be composed exclusively of officers of the same regiment of cavalry, or the same battalion of infantry, unless the convening officer states in the order convening the court that in his opinion other officers are not (having due regard to the public service) available, and also, if he belongs to the same regiment of cavalry or battalion of infantry as the accused, that an order to convene a court composed partly of other officers cannot be obtained from superior authority within a reasonable time.¹

Corps of members of court-martial.

(B) In the case of a court-martial for the trial of an accused person belonging to the auxiliary and not to the regular forces, unless the convening officer states in the order convening the court that in his opinion it is not (having due regard to the public service) practicable, one member at least of the court should belong to that branch of the auxiliary forces to which the accused belongs.²

1. See A.A., 50. General and district courts-martial are army and not regimental courts. The general rule as to such courts-martial is that—

- (1) They should not be composed of officers belonging to the same corps; and
- (2) They must not be composed of officers belonging to the same regiment of cavalry or battalion of infantry, or the same Brigade of Artillery, or in the case of the Royal Garrison Artillery of officers serving in the same Lt.-Colonel's command.

This rule is subject to two exceptions:—(1) If it does not seem practicable to the convening officer that the court-martial should be composed of officers belonging to different corps, it may be composed of officers belonging to the same corps. (2) If the convening officer is of opinion that, having due regard to the public service, officers of more than one regiment of cavalry, battalion of infantry, &c., are not available, the court-martial may be composed of officers all belonging to the same regiment of cavalry or battalion of infantry; but in this case the convening officer must state in the order convening the court that such is his opinion. Further, if the convening officer belongs to the same regiment of cavalry or the same battalion of infantry as the accused, he must also state in the order that an order to convene a court composed partly of officers belonging to a different regiment of cavalry or battalion of infantry cannot be obtained from superior authority within a reasonable time.

If it becomes necessary for a convening officer to avail himself of the services of officers of another command for court-martial duties, the following procedure should be adopted:—the convening officer should apply to the command con-

cerned asking for the names of officers to compose the court and these names should be inserted in A.F.; A. 47. The command which furnishes the officers should then insert in the command orders an order to the effect that "the undermentioned officers have been placed at the disposal of the O.C. No. District (or G.O.C. th Brigade) for duty at a court-martial to assemble at (place) on (date)." The command order need not be attached to the proceedings of the court-martial.

2. Although there is no express provision as to the special reserve, if the accused belongs to the special reserve, one member of the court, should, if practicable, be an officer belonging to the special reserve of officers. If the accused belongs to the territorial force, then by this rule one member of the court must, if practicable, belong to the territorial force.

If an officer of the special reserve of officers, or of the territorial force respectively, is not available, the convening officer must state in the order convening the court that such is his opinion.

An officer of the regular forces who is an adjutant of a special reserve unit, or of a unit of the territorial force, is not considered to be an officer of the special reserve, or of the territorial force, as the case may be.

Rank of members of court-martial in certain cases.

21.¹ (A) In the case of a general court-martial, five at least of the members must not be below the rank of captain.²

(B) The members of a court-martial for the trial of an officer shall be of an equal, if not superior, rank to that officer, unless in the opinion of the convening officer, to be stated in the order convening the court and to be conclusive, officers of that rank are not (having due regard to the public service) available³; and in no case shall an officer under the rank of captain be a member of a court-martial for the trial of a field officer.

1. See in connection with this rule A.A. 48.

2. Whenever a general officer or colonel is available, an officer of inferior rank is not to be appointed president of a general court-martial; and on the trial of the C.O. of a corps, as many members as possible must be officers who have themselves held, or are holding, commands equivalent to that held by the accused; K.R., 578.

3. On the trial of a subaltern officer, two officers of subaltern rank will be a sufficient proportion to be detailed as members of the court.

Procedure at Trial—Constitution of Court.

Inquiry by court as to legal constitution.

22. (A) On the court assembling, the order convening the court shall be read, and also the names, rank, and corps of the officers appointed to serve on the court; and it shall be the first duty of the court to satisfy themselves that the court is legally constituted¹; (that is to say),

- (i.) That so far as the court can ascertain, the court has been convened in accordance with the Army Act, and these Rules²;
- (ii.) That the court consists of a number of officers not less than the legal minimum,³ and, save as mentioned in Rule 18, not less than the number detailed;
- (iii.) That each of the officers so assembled is eligible and not disqualified for serving on that court-martial⁴;
- (iv.) That the president is of the required rank and duly appointed⁵; and
- (v.) In the case of a general court-martial, that the officers are of the required rank.⁶

(B) The court should further, if it is a general or district court-martial to which a judge-advocate has been appointed, ascertain that the judge-advocate is duly appointed, and is not disqualified for acting at that court-martial.⁷

(C) The court, if not satisfied on the above matters, should report their opinion to the convening authority, and may adjourn for that purpose.

1. It is of great importance for the court, as far as lies in their power, to ascertain that they have jurisdiction.

For form see Form of Proceedings, para. (1), p. 679. In addition to the requirements of this rule the court must satisfy themselves that it is composed in accordance with the order convening the court.

2. *I.e.*, in accordance with A.A. 47-50, 122-8, 179 (marines), 180 (Indian forces), 182 (warrant officers) 184 (persons not belonging to H.M.'s. forces) and r.r. 17-21.

The court, in considering whether they are convened in accordance with the Act and Rules, can only look at the order convening the court, and cannot inquire whether the officer issuing the order has or has not a warrant which justifies the issue of the order. But they must have regard to r.r. 20 and 21, and should see that the order states all that it is required to state. (See note 8 to r. 17).

3. See A.A., 47, 48, and note 8 on r. 17. In counting the number of officers the president is included.

4. This applies to the president as well as to the other officers. Where there has been a court of inquiry, care should be taken that no member of that court is appointed to serve on the court-martial, and the president will be careful to satisfy himself conclusively on this point before he fills in and signs the certificate referred to on p. 679, which is required to be entered in red ink at the bottom of the first page of the proceedings.

As to eligibility and non-disqualification, see r. 19 and note, and Ch. V, para. 37.

5. As to rank of president, see A.A. 47 (4), 48 (9), 182 (4). If the president in the case of a general or district court-martial is not a field officer, it will be necessary to ascertain that a proper statement is in the order convening the court.

6. See note 2 to r. 21.

7. The court must consider whether the judge-advocate is appointed by the proper authority as well as in the proper manner. In the United Kingdom, therefore, they should ascertain that the judge-advocate is appointed by the Judge-Advocate-General. Out of the United Kingdom, if the judge-advocate is appointed by the convening officer, the court must assume that that officer is authorised by a warrant to appoint the judge-advocate. As to disqualification, see r. 101 (B).

23. (A) The court, when satisfied on the above matters, should satisfy themselves¹ in respect of each charge about to be brought before them,—

Inquiry by court as to amenability of accused and validity of charge.

- (i). That it appears to be laid against a person amenable to military law,² and to the jurisdiction of the court³; and
- (ii). That each charge discloses an offence under the Army Act, and is framed in accordance with these rules⁴, and is so explicit as to enable the accused readily to understand what he has to answer.

(B) The court, if not satisfied on the above matters, should report their opinion to the convening authority, and may adjourn for that purpose.

1. See Form of Proceedings, para. (1) p. 680. The inquiry by the court under r.r. 22 and 23 is not required to be, but may be, in closed court.

2. See introductory observations to A.A., Part V.

3. The following are examples of cases where the accused would not be amenable to the jurisdiction of the Court:—if the court were a regimental court-martial and the accused were a warrant officer or camp follower (A.A. 182 (1), 184 (1)); or if a reservist were charged with an offence committed when not subject to military law, unless the offence be one mentioned in the Reserve Forces Act, 1882, ss. 6, 15; if the accused were a field officer, and the court comprised a member under the rank of captain (A.A. 48 (7), and r. 21 (B)); if the court were a field general court-martial under A.A. 49, and the accused was not on active service, and the offence charged was not committed against the property or person of an inhabitant of, or resident in, the country.

In the case of persons not belonging to the forces, the question of amenability may depend on whether such person is subject to military law as an officer (A.A. 175 (7) (8)), or as a soldier (see A.A. 176 (9), (10)).

Where the accused is a marine, the question whether he is amenable or not (see A.A. 179 (1)) may not be apparent to the court, and in such a case the court must, at this stage of the proceedings, presume that the accused is amenable, unless he challenges their jurisdiction on some ground which appears to them reasonable and probable; in which case they should refer to the convening officer.

Questions of amenability may also possibly arise with reference to natives of India (see A.A. 175 (7), 176 (10), and 180 (2) (a)).

4. See r.r. 10 and 11.

Procedure at Trial—Challenge and Swearing.

Appearance
of prose-
cutor and
accused.

24. When the court have satisfied themselves as to the above facts, the prosecutor¹, who must be a person subject to military law, should take his place, and the court shall cause the accused to be brought before the court.

I. The selection of the prosecutor is subject to the approval of the convening officer. But the convening officer must not appoint himself to be prosecutor, and the prosecutor must not confirm the finding and sentence of the court. In trials by general court-martial, and in complicated cases, a prosecutor should be specially selected for his experience and knowledge of military law, and should be, as far as possible, relieved from ordinary military duties, so that he may be enabled fully to master the case. In ordinary cases, one of the officers mentioned in r. 19 (B) (iii) may suitably be detailed to act as prosecutor.

A N.C.O. could act as prosecutor, if an officer is not available, in cases where the production of documents only is necessary.

Proceedings
for chal-
lenge of
members of
court.

25. ¹ (A) The court, upon the accused being brought before them, shall ascertain² that the court is constituted of officers to whom the accused makes no reasonable objection³.

(B) The accused has no right to object to the prosecutor or judge-advocate.

(C) The accused shall state the names of all the officers to whom he objects before any objection is disposed of.

(D) The accused may call any person to give evidence in support of his objection⁴.

(E) If more than one officer is objected to, the objection to each officer will be disposed of separately, and the objection to the lowest in rank will be disposed of first; except that, if the president is objected to, the objection to him will be disposed of before the objection to any other officer. On an objection to an officer, all the other⁵ officers present⁶ shall declare their opinions on the disposal of the objection, notwithstanding that objections have been made to any of those officers.

(F) When an objection to an officer is allowed, that officer shall forthwith retire, and take no further part in the proceedings.

(G) When an officer objected to (other than the president) retires, and there are any officers in waiting, the vacancy shall be forthwith filled by one of the officers in waiting being directed to serve in lieu of the retiring officer⁷. If there is no officer in waiting available, the court will proceed as directed by Rule 18⁸.

(H) The eligibility, absence of disqualification, and freedom from objection of an officer filling a vacancy, including that of president, will be ascertained by the court, as in the case of other officers appointed to serve on the court⁹.

1. This rule must be read in connection with A.A. 51

2. For form, see Form of Proceedings, para. (2), p. 680.

3. The accused cannot object to the court collectively, but must make each objection separately. If the accused persists in objecting to the court collectively, the court should treat the objection as made to all the members individually, and should deal with such objections in the usual way. The court may be closed to consider each objection. The objections, together with the statement of any witnesses examined are to be entered in the proceedings.

An officer objected to on the score of personal enmity, prejudice, or malice, or for having formed and expressed an opinion on the case, should, unless the objection is obviously groundless, request, and be permitted, to withdraw.

Objections to individual members under this rule are quite distinct from a plea to the jurisdiction of the court (as to which see r. 34), though an objection may be equivalent to a plea to the jurisdiction of the court; as, for example, when an objection is made to the rank of the president, or when on the trial of a field officer one of the members is objected to because he is below the rank of captain. In such case the objection should be allowed, although it might be raised subsequently under r. 34.

As to objections to the *president*, see A.A. 51 (3) and (4) and r. 18 (B).

4. The witnesses cannot be examined on oath, as the court are not yet sworn, but r.r. 83 and 84 will substantially apply. The accused may apply to give evidence himself or to call his wife as a witness (see r. 80).

5. This excludes an officer from voting on his own case.

6. *I.e.*, who have not retired on the objection being allowed.

7. This "prescribes," for the purposes of A.A. 51 (5), the manner of filling a vacancy. Where any waiting members are detailed it is the duty of the president to appoint one of those members to fill a vacancy.

8. That is, if the court are reduced in number below the legal minimum, they must adjourn for the purpose of the appointment of fresh members; and though not so reduced they should ordinarily adjourn unless they are of opinion that, in the interests of justice and for the good of the service, it is inexpedient to adjourn.

9. Inasmuch as paragraph (H) directs that the eligibility and absence of disqualification of an officer filling a vacancy are to be ascertained by the court, as in the case of other members, the court will ascertain that he is eligible, and not disqualified under r. 19, before the accused is asked whether he objects to him, but as this does not form part of the recorded proceedings, it may be done by the court in the case of officers in waiting at the same time as the inquiry under r. 22, before the accused is brought before them. The accused will be asked whether he objects to the new officer, and if he does, the objection will be dealt with, if he is junior to any other officer objected to, immediately, if not, after the objections to any other officers who are junior to him have been disposed of. He will, though objected to, have to vote on the objection to any other officer who is junior to him. The court should always, in a doubtful case, allow an objection, as it is very important that the court should not only be impartial, but be believed by the accused and his comrades to be so.

26. As soon as the court is constituted with the proper number of officers who are not objected to, or the objections to whom have been over-ruled, the oath shall be administered to each member of the court as follows:—

Swearing members.

- (i.) If there is a judge-advocate, the oath shall be administered by him to the president first, and afterwards to the other members of the court;
- (ii.) If there is no judge-advocate, the oath shall be administered by the president to the other members of the court, and shall be administered to the president by any member of the court already sworn.

1. See, for form of oath, A.A. 52 (1); for form of proceedings, p. 681, para. (2), as to mode of swearing, note to r. 80; as to substitution of declaration for oath, A.A. 52 (4); as to swearing the court to try several persons, r. 71.

The oath may be administered to each member separately, or to two or more members collectively.

Swearing of
judge-
advocate
and other
officers.

27. After the members of the court are all sworn, an oath shall be administered¹ to the following persons, or to such of them as are present at the court-martial, by the president, or by some member of the court, or, except in the case of the judge-advocate, by the judge-advocate, if present, in the following form :—

(A) The form of oath for the judge-advocate shall be :

"You do swear that you will not, unless it is necessary for the due discharge of your official duties, divulge the sentence of this court-martial until it is duly confirmed; and that you will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you GOD."

(B) The form of oath for an officer attending for the purpose of instruction shall be :

"You do swear that you will not divulge the sentence of this court-martial until it is duly confirmed; and that you will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you GOD."

(c) The form of oath for a shorthand writer shall be :

"You do swear that you will truly take down to the best of your power the evidence to be given before this court-martial, and such other matters as you may be required, and will, when required, deliver to the court a true transcript of the same. So help you GOD."

(D) The form of oath for an interpreter shall be :

"You do swear that you will to the best of your ability truly interpret and translate, as you shall be required to do, touching the matter before this court-martial. So help you GOD."

1. See A.A. 52 (2), and note to r. 30. For form see Form of Proceedings, para. (2), pp. 681-2. A solemn declaration may be substituted when sanctioned by A.A. 52 (4).

Substitu-
tion of
solemn
declaration
for oath.

28. Where a person is permitted¹ to make a solemn declaration instead of being sworn, the form of declaration shall be as follows²; that is to say :

(A) In the case of the president or other member of the court :

"I, _____, do solemnly promise and declare that I will well and truly try the accused before the court according to the evidence, and that I will duly administer justice according to the Army Act now in force, without partiality, favour, or affection, and I do further solemnly promise and declare that I will not divulge the sentence of the court until it is duly confirmed, and further that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law."

(B) In the case of the judge-advocate :

"I, _____, do solemnly promise and declare that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not, on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law."

(c) In the case of an officer attending for the purpose of instruction :

"I, _____, do solemnly promise and declare that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not, on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law."

(D) In the case of a shorthand writer :

"I, _____, do solemnly promise and declare that I will truly take down to the best of my power the evidence to be given before this court-martial, and when required will deliver to the court a true transcript of the same."

(E) In the case of an interpreter :

"I, _____, do solemnly promise and declare that I will, to the best of my ability, faithfully and truly interpret and translate as I shall be required to do touching the matter now before this court-martial."

(F) The declaration shall be made before some person authorised by these rules to administer the oath.

1. See A.A. 52 (4).

2. In case a solemn declaration is made, a note should be added to the proceedings, stating that the individual has made a solemn declaration instead of being sworn.

29. When the oath is administered to or the declaration made by the members of a court who are about to try several persons, the plural shall be substituted for the singular wherever required.

Form of oath in case of trial of several persons.

30. (A) If any person desires to swear with uplifted hand in the form and manner in which an oath is usually administered in Scotland, he shall be permitted to do so.

Swearing of person according to the form of his religion.

(B) In any case an oath may be administered in such form and with such ceremonies as the person to be sworn declares to be, according to his religion, binding on his conscience.

(C) For the purpose of both (A) and (B) the words "You do swear" and "So help me GOD" may be omitted or varied.

1. The oath will usually be administered as follows:—The person to be sworn will take the book in his right hand ungloved. The person administering the oath will repeat the oath, and, on the repetition being ended, the person to be sworn will say the words "So help me GOD," and kiss the book. The words of the oath should be said with distinctness and solemnity by the person administering it.

The book must be the New Testament, or some book containing it. An oath taken on the Book of Common Prayer containing the Epistles and Gospels is properly taken, and a person violating the oath may be convicted of perjury.

In the case of a witness, it is well, in the interest of truth, to prevent subterfuges such as omitting the words "So help me GOD," or kissing the thumb instead of the book, as dishonest witnesses fancy that thus they escape the guilt of perjury.

If the above ceremonies are not in accordance with the religion of the person to be sworn, the ceremonies of his religion must be followed as provided by this rule. If he objects to take an oath, and the court are satisfied of the sincerity of the objection, or if he is objected to as incompetent to take an oath, and the court are satisfied that the oath has no binding effect on his conscience, the court should permit him to make a solemn declaration in the form directed by r. 28, or in the case of a witness, r. 82, A.A. 52 (4).

A person desiring to be sworn in the Scotch form will swear standing and holding up his right hand, and the oath will be in these terms: "I swear by Almighty GOD, as I shall answer to GOD at the Great Day of Judgment, that" If a person has expressed his desire to be so sworn, no question as to his religious belief is to be asked, nor is he to be required to hold or kiss a Bible while being sworn.

A Jew is sworn on the Old Testament, with his head covered. In the case of a Roman Catholic the book is closed, and a cross is marked on the cover. A Mahomedan is sworn on the Koran, sometimes kissing it or placing it on his head. In the case of natives of India, the form varies according to race, caste, and the part of the country, and it will be well to follow the practice of the civil courts of the district, and if they receive an affirmation instead of an oath, to receive such affirmation.

Prosecution, Defence, and Summing-up.

Arraign-
ment of
accused.

31. (A) After the members of the court and other persons are sworn as above mentioned, the accused shall be arraigned¹ on the charges against him.

(B) The charges upon which the accused is arraigned will be read to him, and he will be required to plead separately to each charge².

1. See Ch. V, paras. 49, 50. The accused is usually arraigned by the president or the judge-advocate. For Form see Form of Proceedings, para. (3), p. 682. Where two or more persons are tried together for the same offence, each is separately arraigned.

2. The charge-sheet containing the charges as settled by the convening officer will be in the possession of the president, r. 17 (E), who will lay the charge-sheet before the court immediately before arraignment, and the charge-sheet will then be annexed to the proceedings. If any charge appears to the prosecutor to require amendment, he should communicate with the convening officer before the trial begins.

Objection
by accused
to charge.

32. The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Army Act, or is not in accordance with these rules.

1. See r.r. 9-12. For Form see Form of Proceedings, para. (3), p. 682. An objection to the jurisdiction of the court must be raised by way of special plea, r. 34.

If it appears that the accused is, by reason of insanity, unfit to take his trial, the court will find the fact specially, and he will be dealt with as provided in A.A. 130 and r. 57.

Amend-
ment of
charge.

33. (A) At any time during the trial, if it appears to the court that there is any mistake in the name or description of the accused in the charge-sheet, the court may amend the charge-sheet so as to correct that mistake¹.

(B) If on the trial of any charge² it appears to the court, at any time before they have begun to examine the witnesses³, that in the interests of justice any addition to, omission from, or alteration in⁴, the charge is required, they may report their opinion to the convening authority, and may adjourn, and the convening authority may either direct a new trial to be commenced, or amend the charge, and order the trial to proceed with the amended charge after due notice to the accused.

1. A mistake in name or description will only be amended, if it is clear to the court that the accused is the person intended to be charged in the charge-sheet, and that he is not prejudiced in his defence by the mistake having been made.

2. The court may act under this paragraph whether the objection to the charge is taken by the accused or the judge-advocate, or by a member of the court, and either before or after the arraignment of the accused. (See r.r. 23, 32.)

3. *I.e.*, the witnesses on the substance of the charge; not witnesses as to objections to the officers, or with respect to a special plea to the jurisdiction.

4. If the addition, omission, or alteration can be met by means of a special finding under r. 44 (as, for instance, by omitting some of the articles alleged to have been stolen or lost by neglect, or by correcting a mistake in an immaterial date), it will not usually be necessary to have the charge amended; but if the date is material, or if the charge appears not to disclose an offence under the Army Act, or if any addition requires to be made to the charge, it will be safer for the court to adjourn and apply for the amendment of the charge.

Special plea
to the juris-
diction.

34. (A) The accused, before pleading to a charge, may offer a special plea to the general jurisdiction of the court¹; and, if he does so, and the court consider that anything stated in the plea shows that the court have not jurisdiction, they shall receive any evidence² offered in support, together with any evidence offered by the prosecutor in disproof or qualification thereof, and any address by the accused and reply by the prosecutor in reference thereto.

(b) If the court overrule the special plea they should proceed with the trial³.

(c) If the court allow the special plea⁴, they shall record their decision and the reasons for it, and report it to the convening authority and adjourn; such a decision shall not require any confirmation, and the convening authority shall either forthwith convene another court for the trial of the accused, or order the accused to be released.

(d) If the court are in doubt as to the validity of the plea, they may refer the matter to the convening authority, and may adjourn for that purpose, or may record a special decision⁵ with respect to the plea, and proceed with the trial.

1. i.e., a plea to the right of the court generally to try the accused on any charge at all, as distinct from any plea which relates only to the particular charge on which the accused is brought before the court; e.g., a plea that the court is improperly constituted, either in respect of the rank or number of the members, or that the accused is not amenable (see note 3 to r. 28) to the court. A plea relating to the particular charge will be raised by way of plea in bar of trial, under r. 36, *q.v.*

2. Evidence, when necessary, must be taken on oath, like the evidence of other witnesses, and includes the evidence of the accused and his wife. The accused may, notwithstanding that he has given evidence, address the court in reference to the plea.

3. The confirmation of the finding, after a plea to the jurisdiction is overruled, will, without any special mention, necessarily have the effect of confirming the decision of the court overruling the plea. If, on the other hand, the confirming officer thinks that the plea to the jurisdiction, although it was overruled, is valid, he must refuse to confirm the finding of the court; but inasmuch as the court must in that case be considered as having had no jurisdiction to try the accused, the accused, in strict law, will not have been tried at all, and can, therefore, still be tried for the alleged offence.

4. If the court allow the plea, the convening officer cannot overrule the finding, but may convene another court.

5. This in effect transfers the question to the decision of the confirming authority, who should act merely as if the plea had been overruled; see note 3, *sup.*

35. (A) If no special plea to the general jurisdiction of the court is offered, or if such plea, being offered, is over-ruled, the accused person's plea—"Guilty" or "Not guilty" (or if he refuses to plead, or does not plead intelligibly¹ either one or the other, a plea of "Not guilty")—shall be recorded on each charge. General plea of "Guilty" or "Not guilty."

(B) If an accused person pleads "Guilty," that plea shall be recorded as the finding of the court; but, before it is recorded, the president, on behalf of the court, should ascertain that the accused understands the nature of the charge² to which he has pleaded guilty, and should inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure³ which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence that the accused ought to plead not guilty⁴.

1. If the accused pleads in some language not understood by the court, or inarticulately, he will not have pleaded intelligibly, and a plea of "Not guilty" will be entered.

2. This direction is to prevent the accused pleading guilty under a misapprehension. E.g., a man charged with wilfully damaging his arms may, under a misapprehension, plead guilty, because the arms have been actually damaged, though not wilfully. In such a case the president must explain to him that if he did not do it wilfully, he must plead not guilty. So, again, on a charge for desertion, the plea "Guilty, but I intended to return" amounts to a plea of "Not guilty," as the intention not to return is (except as mentioned in Ch. III, para. 16) an essential element in the offence of desertion.

3. This is shown by r. 37. See also Ch. V para. 54.

4. A plea of "Guilty" is only to be taken to the extent to which it is pleaded. Thus a man arraigned upon a charge of losing by neglect a number of articles, who pleads guilty in respect of some of those articles only, must be taken to have pleaded "Not guilty," as regards the remaining articles. An accused person arraigned upon a charge of receiving property knowing it to have been stolen, who pleads guilty "except that he did not know it was stolen," must be dealt with as having pleaded not guilty. So as regards any act of which the intention is an element, where the accused pleads guilty, but says that he "did not intend to do it," or words to that effect; so if the accused pleads guilty to two or more alternative charges, the president shall point out that he can only be guilty of one.

Generally, the president has, under this rule, the duty of advising the accused to withdraw a plea of guilty, if it appears from the summary of evidence that he ought to plead not guilty.

If the accused pleads guilty, a statement that the requirements of r. 35 (B) have been complied with must be recorded; see Form of Proceedings, para. (8), p. 682.

It must be recollected that there is nothing untrue in a person pleading not guilty, even though he committed the offence, as the plea merely amounts to an expression of desire to have a formal trial; *e.g.*, if a man admits that he struck a N.C.O., but wishes to show that it was done under circumstances of very great provocation and does not therefore deserve severe punishment, he must plead not guilty, as if he pleads guilty he will not be able, either by cross-examination of the prosecutor's witnesses or by calling witnesses on his own behalf, to show the existence of such provocation, save as above mentioned under r. 37 (F).

As to procedure where it appears from subsequent proceedings that the plea of guilty was entered under a misapprehension, see r. 37 (D).

Plea in bar.

36. (A) The accused at the time of his general plea of "Guilty" or "Not guilty" to a charge for an offence, may offer a plea in bar of trial on the ground that—

- (1) he has been previously convicted or acquitted of the offence by a competent civil court or by a court-martial or has been dealt with summarily by his commanding officer for the offence¹; or
- (2) the offence has been pardoned or condoned by competent military authority¹; or
- (3) the time which elapsed between the commission of the offence and the beginning of the trial was more than three years¹, or in the case of a civil offence² proceedings in respect of which must be commenced within a shorter period than three years, more than that shorter period.

(B) If he offers a plea in bar the court shall record it as well as his general plea, and if they consider that any fact or facts stated by him are sufficient to support the plea in bar they shall receive any evidence offered³ and hear any address made by the accused and the prosecutor in reference to the plea.

(C) If the court find that the plea in bar is proved they shall record their finding, and notify it to the confirming authority, and shall either adjourn, or if there is any other charge against the accused, whether in the same or in a different charge-sheet, which is not affected by the plea in bar, may proceed to the trial of the accused on that charge.

(D) If the finding that a plea in bar is proved is not confirmed, the court may be re-assembled by the confirming authority, and proceed as if the plea had been found not proved.

(E) If the court find that a plea in bar is not proved, they shall proceed with the trial, but such a finding shall be subject to confirmation like any other finding of the court.

1. The Army Act provides that a man shall not be liable to be tried for an offence of which he has been convicted or acquitted by a court-martial (s. 157), or by a civil court (s. 162 (6)), or for which he has been dealt with summarily by his commanding officer (s. 46 (7)), or which (with the exceptions of mutiny, desertion, or fraudulent enlistment) was committed more than three years before the date of the trial (s. 161).

2. In general there is in civil courts (except courts of summary jurisdiction) no limitation of time within which criminal proceedings for civil offences may be commenced, but in some few cases—e.g., carnal knowledge of a girl between 13 and 16—proceedings must be commenced within a shorter period than six months from the commission of the offence; see Ch. VII, para. 38. In these cases proceedings must be commenced in the military courts within the shorter period.

3. See note to Rule 34 (A).

87. (A) Upon the record of the plea of "Guilty," if there are other charges in the same charge-sheet to which the plea is "Not guilty," the trial will first proceed with respect to those other charges, and, after the finding on those charges, will proceed with the charges on which a plea of "Guilty" has been entered; but if they are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded "Guilty" to any charge, or may, instead of trying him, record a finding of "Not guilty" on each alternative charge to which the accused has not pleaded "Guilty."¹

(B) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges) the court shall receive any statement² which the accused desires to make in reference to the charge, and shall read the summary or abstract of evidence, and annex it to the proceedings, or if there is no such summary or abstract, shall take and record sufficient evidence to enable them to determine the sentence, and the confirming officer to know all the circumstances connected with the offence. This evidence will be taken in like manner as is directed by these Rules in the case of a plea of "Not guilty."

(C) After evidence has been so taken, or the summary or abstract of evidence has been read, as the case may be, the accused may make a statement in mitigation of punishment, and may call witnesses as to his character³.

(D) If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea of "Guilty," the court shall alter the record and enter a plea of "Not guilty," and proceed with the trial accordingly.

(E) If a plea of "Guilty" is recorded, and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under (B) and (C) will take place when the findings on the other charges in the same charge-sheet are recorded.

(F) When the accused at any court-martial states anything in mitigation of punishment which in the opinion of the court requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the accused to call witnesses to prove the same⁴.

1. In the illustration of charge in Appendix 1, p. 659, the charges are not alternative, and therefore, if the accused pleads guilty to one charge and not guilty to the other charge the court should proceed to try him on the charge to which he has pleaded not guilty. In the case of alternative charges a man cannot be guilty of all of them; e.g., in the case of specimen charge sheet 59 p. 670, he cannot both have "made away with" and "lost by neglect," the same articles of his regimental necessaries. If, therefore, he pleads guilty to one charge, the court should usually

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enter a finding of not guilty on the other, as inconsistent with the one to which he has pleaded guilty; but if the summary of evidence shows clearly that he made away with the articles, and he pleads guilty only to losing them by neglect, the court should try him for the making away with his necessities, inasmuch as it is a more serious offence than losing by neglect, and a soldier ought not, by pleading guilty to the less grave offence, to escape punishment for the graver one.

2. If it appears from this statement or otherwise that the accused did not understand the effect of his plea of "Guilty," it will be the duty of the court to record a plea of "Not Guilty," and to proceed with the trial. (See notes to r. 35 and for form of proceedings see under "variation" on p. 683). Or, again, if he alleges very great provocation for the offence, it may be desirable to record a plea of "Not Guilty" in order to allow the existence of such provocation to be proved in the ordinary way.

If a court fail to observe this rule and treat such a plea as mentioned in note to r. 35 in the case of desertion, as a plea of "Guilty," the confirming officer should refuse confirmation; he can then order a new trial. See A.A. 54 (6), 157, and notes. If he confirms, the whole proceedings are nevertheless invalid.

8 In the case of a plea of "Guilty," the accused will always be asked whether he has any witnesses to call as to character. For form see Form of Proceedings, para. (4), p. 684. If evidence is taken the accused can cross-examine the witnesses both in extenuation of the offence with a view to the mitigation of punishment, and as to character; see r. 39, and Form of Proceedings, para. (4), p. 684. It will be observed that the accused cannot, except by permission of the court under (F), call witnesses in extenuation of the offence and consequent mitigation of punishment.

4. The court should always, if accused requests it, allow witnesses to be called, to prove any statement made by him in mitigation of punishment.

Withdrawal
of plea of
"Not
guilty."

38. The accused may, if he thinks fit, at any time during the trial, withdraw his plea of "Not guilty," and plead "Guilty," and in such case the court will at once, subject to a compliance with Rule 35 (B), record a plea and finding of "Guilty," and shall, so far as is necessary, proceed in manner directed by Rule 37.

1. If the accused proposes to withdraw his plea of not guilty, the court must inform him of the general effect of his withdrawal, and of the difference in the procedure, in the same manner as if he pleaded guilty under r. 35.

Plea of
"Not
guilty" and
case for the
prosecution.

39. After the plea of "Not guilty" to any charge is recorded, the trial will proceed as follows¹ :—

(A) The prosecutor may, if he desires, make an opening address.²

(B) The evidence for the prosecution shall then be taken.³

(C) If it should be necessary for the prosecutor to give evidence for the prosecution, he should give it after the delivery of his address, and he must be sworn, and give his evidence in detail.⁴

(D) He may be cross-examined by the accused, and afterwards may make any statement which might be made by a witness on re-examination.

1. For form see Form of Proceedings, para. (5) p. 684.

2. In cases of any complexity, such as cases of embezzlement, the prosecutor should always make an opening address for the purpose of explaining the charge, and enabling the court better to follow the evidence. This is the only object of the address. As a rule the address of the prosecutor should be in writing. See further r. 60, and note.

3. As to the evidence, see r.r. 81 to 86. The evidence will be taken by question and answer; r. 83.

All facts essential to constitute the offence charged must be proved; e.g., on a charge of making false accusations, &c., it is necessary to prove—

(1) That the accusation was made against an officer or soldier by the accused;

(2) That it was false;

(3) That the accused made it knowing it was false.

Respecting the duty of the president, see r. 59, and note.

4. The prosecutor should never himself give evidence *before* the finding unless it be to prove a date or other formal matter, or produce documents: and even formal matter should not be left to be proved by him, if it can possibly be helped. The production of documents which are in his possession is not open to the same objection. As to evidence by the prosecutor *after* the finding, see note to r. 46.

The only possible exception to the rule of the prosecutor not giving evidence will be occasionally on active service, where the trial cannot be postponed, and the same officer is a material witness and also the only available officer for the duty of prosecutor. In these exceptional cases, it is essential that his sworn statements as a witness should be kept quite distinct from his statements made as prosecutor. Consequently he must give his evidence before any other witness, and in detail, and must not, after delivering an address, be allowed to swear generally to the statements contained in it.

If several cases are tried before the same court on the same day, and the same person is prosecutor in more than one such case, he must, if he gives evidence, be sworn as a witness in each case. It is not sufficient that he has been previously sworn, as the oath must be taken in the presence of the accused in respect of whom he gives evidence.

Documentary evidence will be read by the judge-advocate, or by the president, or by some member of the court, and will be entered on the proceedings.

When counsel appears on behalf of the prosecutor, (C) and (D) do not apply; see r. 89 (D).

40.—(1) At the close of the evidence for the prosecution the accused shall be told by the court that he may, if he wishes, give evidence as a witness, but that if he gives evidence he will subject himself to cross-examination¹.

Procedure where no witnesses; to facts (except accused) called.

(2) The accused will then be asked whether he wishes to give evidence as a witness himself, and whether he intends to call any witnesses to the facts of the case other than himself.²

(3) Unless the accused states that he intends to call witnesses to the facts of the case³ other than himself the procedure will be as follows:—

- (A) The accused, if he wishes to do so, will give evidence as a witness.⁴
- (B) At the close of the evidence of the accused, or, if the accused has not given evidence, then immediately after the accused has been asked the question mentioned in (2) the prosecutor may address the court a second time for the purpose of summing up the evidence for the prosecution and commenting on the evidence of the accused (if any).⁵
- (C) The accused will then be asked if he has anything to say in his defence and may address the court in his defence.⁶
- (D) The accused may call witnesses as to his character.
- (E) The prosecutor may produce, in reply to the witnesses as to character, proof of former convictions and entries in the conduct book, but he may not again address the court.⁷

1. The information required to be given to the accused will be given by the judge-advocate, or, if there is not one, by the president. Great care should be taken to explain to the accused, especially if he is not defended by counsel, that he need not give evidence unless he wishes, and what his position will be if he gives evidence himself. (See also notes to r.r. 80 and 94.)

2. The questions will be put by the judge-advocate, or, if there is not one, by the president. The accused must be informed of the difference between witnesses to facts and witnesses to character only. In particular it must be explained to the accused that if he announces his intention of calling any witnesses as to character he will not subsequently be allowed to produce any evidence as to facts (other than his own evidence) in extenuation of the offence, or otherwise. Further, the accused must be told that his wife cannot be called as a witness (unless he applies to the court to have her called (as to the

exceptions to this rule, see notes to r. 80). For forms see Form of Proceedings, paras. (6) and (7), pp. 686-690.

3 Every witness except a witness to character only is a witness to the facts of the case. Accordingly, a witness as to extenuating circumstances is a witness to the facts of the case.

4. If the accused is the only witness to the facts of the case he is to give his evidence directly after the close of the case for the prosecution. No questions may be put to the accused as to his character except in the circumstances specified in r. 80. (As to the duty of the president and judge-advocate towards the accused, see r.r. 59 (B) and 103 (G) and (H) and notes.)

5. The observations with respect to the opening address of the prosecution (see note to r. 60 (A)) apply equally to his second address. In summing up the evidence the prosecutor must confine his remarks to the evidence. He may comment on the evidence given by the accused, but must not comment on the fact that the accused or his wife has not given evidence. He must not keep back or gloss over any weak points of the evidence of the prosecution, or the strong points of the evidence for the defence; in fact, he should understate rather than overstate that view of the facts which it is his duty to bring before the court on behalf of the prosecution; still less must he state any new fact relating to the case, which has not been given in evidence. Any deviation in these respects on the part of the prosecution, or any want of moderation, may lead to the proceedings being invalidated. The court should, so far as possible, stop the prosecutor transgressing in any of these respects. The accused, on the other hand, has the privilege, whether he has given evidence himself or not, of making statements in his address unsupported by evidence, and when those statements are made on the personal knowledge of the accused, they must be dealt with as evidence, though not on oath. But if the accused has given evidence himself, any statement which could have been made on oath can hardly have much weight with the court if not so made. See also note to r. 43 (A).

6. The fact that the accused has given evidence himself will not deprive him of his right of addressing the court, unless he is defended by counsel or by an officer acting as counsel; see r. 94 and note.

7. This evidence can only be adduced before the finding in cases where the accused calls witnesses to character or obtains from the prosecutor's witnesses evidence of his good character.

Procedure
where
witnesses
are called
for defence.

41. If the accused states that he intends to call witnesses to the facts of the case, other than himself, the procedure will be as follows¹ :—

- (A) The accused will be asked if he has anything to say in his defence, and may address the Court in his defence².
- (B) The accused may himself give evidence as a witness, and may call his other witnesses, including witnesses as to character³.
- (C) After the evidence of all the witnesses for the defence has been taken, the accused may again address the Court, and the time at which his second address is allowed is in these rules referred to as the time for the second address of the accused.
- (D) The prosecutor will be entitled to address the Court in reply.

1. For form, see Form of Proceedings, para. (8), p. 690.

2. As to the questions to be addressed to the accused, see notes to r. 40. The utmost liberty consistent with the interest of parties not before the court, and with the dignity of the court itself, should be allowed to the accused in making his defence (see r. 60 (C)), and the court should, if necessary, adjourn to allow him time for its preparation. If the accused has expressed an intention of giving evidence himself, he should be warned against making statements as to facts within his own knowledge which he will not be able to substantiate on oath. As to friend of accused and counsel, see r.r. 87-94.

3. The accused is entitled to give his evidence at any time whilst the evidence for the defence is being heard, and even though he has previously

stated that he did not intend to give evidence himself. He should, however, usually give his evidence before any other witnesses for the defence and should be warned that if he gives his evidence after hearing the evidence of other witnesses for the defence, the value of his evidence may be considerably discounted. The prosecutor would be justified in commenting on the fact that the accused had chosen to give his own evidence after hearing the evidence of his other witnesses.

42. (A) The judge-advocate, if any, will, unless he and the court think a summing-up unnecessary, sum up in open court the whole case to the court¹. Summing-up by judge-advocate.

(B) After the judge-advocate has spoken, no other address shall be allowed.

1. The summing-up of the judge-advocate ought, like that of a judge to a jury, to be perfectly impartial; see r. 103 (G), (H). In simple cases a summing-up is unnecessary; but even where the facts are simple, difficult questions may sometimes arise as to the particular offence which the acts constitute in law, and in that case the judge-advocate should give his opinion on the legal point. The judge-advocate has, it will be observed, a right to sum-up whenever he considers a summing-up necessary. The summing-up need not be in writing.

The judge-advocate may in his summing-up comment on the fact that the accused has not applied to give evidence himself or to call his wife as a witness; whether he does so or not must be left to his individual discretion in each case. The judge-advocate may also comment on the fact that the accused has chosen to give his evidence after hearing the evidence of other witnesses for the defence.

If the summing-up is unnecessary, an entry to that effect must be made in the proceedings; see Form of Proceedings, para. (9), p. 691.

Finding and Sentence.

43. (A) The court will deliberate on their finding in closed court¹. Consideration of finding.

(B) The opinion of each member of the court will be taken separately on each charge².

1. See r. 63.

The president may commence the deliberation on the finding by a statement of the questions to be considered, and the order in which they are to be considered, and the bearing of the evidence on those questions, and other members of the court may comment on the evidence, and the truth or otherwise of the defence.

The great points for all the members to keep before their minds are (1) that according to one of the fundamental maxims of English law a man is to be presumed innocent until he is proved guilty, and (2) that they have to find *according to the facts proved in evidence*; and to this end they must carefully separate mere statements made by the prosecutor or by the accused, when not giving evidence on oath, from facts proved by the respective witnesses. Some weight may, however, be allowed to a statement of the accused, even though not given on oath; e.g., if the statement would not have been admissible as evidence from the accused, or if it is corroborated incidentally, or otherwise, by evidence, or if the accused has been unable to procure a witness who might have given evidence on the point, considerable weight may be allowed to the statement. It will, however, be hardly possible to attach any weight to a statement not on oath which the accused might have made on oath and subjected to the test of cross-examination.

Where the proceedings are voluminous, the judge-advocate should be prepared with such notes as may assist the members in referring to any particular part of the evidence. He will not offer any opinion except on legal points; see r. 103.

It is competent to the court, if they think fit (see r. 86 (D)), to call or recall a witness for the purpose of putting any question deemed essential; but any such witness must be examined in the presence of the parties, and all questions put to him, whether by a member of the court, the prosecutor, or accused, will be put through the president.

2. As to taking opinions, see r. 69, and note. The opinions will be taken separately on each charge, and the court, if they think that the offence stated in any charge is not proved, must acquit the accused on that charge, irrespec-

tive of any other charge; but where the charges are *alternative*, the conviction under one necessarily involves an acquittal under the other charges, as, for instance, in the example in specimen charge sheet 59, p. 670.

Form and
record of
finding.

44. (A) The finding on every charge will be recorded and, except as mentioned in these rules, will be recorded simply as a finding of "Guilty," or of "Not guilty," or of "Not guilty and honourably acquit him of the same."¹

(B) Where the court are of opinion as regards any charge that the facts which they find to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, they may, instead of a finding of "Not guilty," record a special finding².

(C) The special finding may find the accused guilty on a charge, subject to the statement of exceptions or variations specified therein³.

(D) Where the court are of opinion as regards any charge that the facts proved do not disclose an offence under the Army Act, the court will acquit the accused of that charge.⁴

(E) If the court doubt as regards any charge whether the facts proved show the accused to be guilty or not of an offence under the Army Act, they may, before recording a finding on that charge, refer to the confirming authority for an opinion, and, if necessary, adjourn for that purpose.⁵

(F) Where there are alternative charges, and the facts proved appear to the court not to constitute the offence mentioned in any of those alternative charges, the court shall record a finding of "Not guilty" on that charge; but if the court think that the facts so proved constitute one of the offences stated in two or more of the alternative charges, but doubt which of those offences the facts do at law constitute, then they may, either before recording a finding on those charges refer to the confirming authority for an opinion, and, if necessary, adjourn for the purpose, or they may record a special finding, stating the facts which they find to be proved, and stating that they doubt whether those facts constitute in law the offence in such one or another of the alternative charges as are specified in the finding.⁶

1. For form see Form of Proceedings, paras. (10) and (11), p. 692. Under A.A. 54 (3) an acquittal on a charge requires no confirmation. For procedure where the finding is "Not guilty" on all the charges, see r. 45. The finding of honourable acquittal may be recorded in the case of N.C.O.s. and privates as well as of officers, but is not to be recorded as a matter of course upon an acquittal. A finding of honourable acquittal is incorrect in a case where the charge does not affect the honour of the accused person.

Another case in which an honourable acquittal is incorrect is thus pointed out by the Duke of Wellington (Well. Desp., vol. 5, 221-2):—

"It is difficult and needless at present to define in what cases honourable acquittal is peculiarly applicable; but it must appear to all persons to be objectionable in a case in which any part of the transaction which has been the subject of investigation before the court-martial is disgraceful to the character of the party under trial. A sentence of honourable acquittal by a court-martial should be considered by the officers and soldiers of the army as a subject of exultation, but no man can exult in the termination of any transaction, a part of which has been disgraceful to him; and although such a transaction may be terminated by an honourable acquittal by a court-martial, it cannot be mentioned to the party without offence, or without exciting feelings of disgust in others; these are not the feelings which ought to be excited by the recollection and mention of a sentence of honourable acquittal."

2. For form of special finding, see Form of Proceedings, para. (10), p. 692, and for form of acquittal, para. (11), p. 692. In case of

immaterial variation, the finding may simply be recorded as "Guilty"; as, for example, if the accused is found to have made away with his regimental necessities on the 25th, and not on the 26th of August, or to have made away with two pairs of boots, and not one pair of boots, the variation is immaterial, and he may simply be found guilty of the charge.

8. Thus, if the court find that the facts stated in the charge are only proved in part, they may find the accused guilty, subject to the exceptions or variations. The facts, however, which they find to be proved, subject to the exceptions or variations, must amount to the substance of the offence actually charged, otherwise the court should acquit the accused. If, e.g., in the case supposed by specimen charge sheet 59 (p. 670), they find that the accused made away with one brush, but not the pair of boots, the other brush, and the shirt, they may find the accused guilty, with the exception that he did not make away with the pair of boots, one brush, and the shirt. If, on the other hand, they find from the evidence that he did not make away with a pair of boots, two brushes, or a shirt, but did make away with other regimental necessities, they must acquit the accused; or if they find that he lost the articles aforesaid, but did not make away with them by sale or otherwise, they must acquit him of the charge of making away with them. As to the application of this principle to cases of absence without leave, see note 6 to r. 11.

4. If, for example, a man is charged with receiving, knowing it to be stolen, the money of a comrade, and the court are of opinion that, although the money had actually been stolen, the accused was unaware of the fact, they must acquit him, inasmuch as the act of receiving stolen money, apart from guilty knowledge, would not amount to an offence.

5. This paragraph provides that, where the court doubt as to whether the facts proved constitute in law the offence charged, the court may refer to the confirming authority. For instance, if they find that the accused took certain sums of money, but doubt whether the circumstances under which he took them do or do not constitute embezzlement, or an offence of a fraudulent character, they may state the facts which they find proved, and refer to the confirming authority for an opinion as to whether they constitute the offence. The court, however, cannot refer to the confirming authority for any opinion as to the facts, but merely as to the legal results to which those facts amount. The reasons for reference and the opinion of the confirming authority should be recorded in the proceedings.

6 The special findings above mentioned relate only to the particulars in the charge. A special finding can in no case (except under A.A. 56 as mentioned below) alter the statement of the offence in the charge; but under this paragraph, if there are alternative charges, and the court doubt whether the facts proved amount in law to one charge or the other, and they do not think it advisable to refer to the confirming authority for an opinion, they can record a special finding, and thus leave it to the confirming authority under r. 55 (A) to determine whether the facts found by the court constitute in law the one offence or the other. For example, if on a charge for insubordinate language, they find that the accused used the language charged, but doubt whether the language is such or was used under such circumstances as to be in law an offence within A.A. 8, they may record a special finding, setting out the language they find to be used, and the officer to whom, or the circumstances under which, it was used, and state that they doubt whether the use of the language under the circumstances is insubordinate or not. The confirming authority will then decide, under r. 55 (A), whether such a finding amounts to a conviction on any of the charges.

The only other description of special finding which affects the statement of the offence is in those cases where by A.A. 56 a man charged with one offence may be found guilty of another offence; see note on that section.

45. (A) If the finding on each of the charges in a charge-sheet is "Not guilty," the president will date and sign the proceedings, the findings will be announced in open court¹, and the accused will be released in respect of those charges². Procedure on acquittal.

(B) The proceedings shall then, upon being signed by the judge-advocate (if any), be transmitted at once in like manner as is directed by these rules³ in the case where the findings require confirmation.

1. This is required by A.A. 54 (3). For forms see Form of Proceedings, para. (11), p. 692.

2. Consequently the accused may be kept in custody and tried on the charges of any *other* charge-sheet, or on any other charge which is in course of investigation by his commanding officer.

3. See r.r. 50 and 97.

Procedure
on conviction.

40. (A) If the finding on any charge is "Guilty, then, for the guidance of the court in determining their sentence, and of the confirming authority in considering the sentence, the court, before deliberating on their sentence, may take evidence of and record the character, age, service, rank, and any recognized acts of gallantry or distinguished conduct, of the accused, and the length of time he has been in arrest or in confinement on any previous sentence¹, and any deferred pay, military decoration, or military reward², of which he may be in possession or to which he is entitled, and which the court can sentence him to forfeit³.

(B) Evidence on the above matters may be given by a witness verifying a statement which contains a summary of the entries in the regimental books⁴ respecting the accused person, and identifying the accused as the person referred to in that summary.

(C) Evidence on the part of the prosecutor upon the above matters should not be given by a member of the court.

(D) The accused may cross-examine any such witness, and may call witnesses to rebut any such evidence⁵; and if the accused so requests, the regimental books, or a duly certified copy⁶ of the material entries therein, shall be produced; and if the accused alleges that the summary is in any respect not in accordance with the regimental books, or such certified copy, as the case may be, the court shall compare the summary with those books or copy, and if they find it is not in accordance therewith, shall cause the summary to be corrected accordingly.

When all the evidence on the above matters has been given, the accused may address the court thereon.

(E) If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the court renders him liable to any exceptional punishment⁷ in addition to that to be awarded by the sentence of the court, it will be the duty of the prosecutor to call the attention of the court to the fact, and it will be the duty of the court to enquire into the nature and amount of such additional punishment.

1. For form see Form of Proceedings, para. (12), p. 693.

The court will always take evidence as to character, unless the circumstances render it impracticable so to do, in which case they will record the reasons for such impracticability in the proceedings.

Any previous convictions of the accused may be proved by the production of a verbatim extract from the regimental books, certified by the officer in charge of those books (A.A. 163 (g), K.R., 1916-1921). But a conviction by a civil court may be proved by the production of a certificate (A.A. 164) of the conviction, and must be so proved if there is reason to doubt the correctness of the entry of the conviction in the regimental books. A witness must always be called to prove the identity of the accused with the person stated in the extract or certificate to have been convicted.

It must be recollected that it is not competent for the court to take verbal evidence of the accused being a *bad* character. The badness of his character must be proved by former convictions and entries in the conduct book, and not by the expression of any opinion to that effect by witnesses, although such opinion is admissible as evidence of *good* character. However, if the accused calls evidence of good character, the prosecutor may cross-examine those witnesses, with a view to test their veracity, and thereby indirectly bring out evidence of bad character. If the accused himself gives evidence, the prosecutor may in such cases cross-examine him as to character; see r. 80 and note.

Witnesses in favour of the character of the accused will be called, as a rule, either as part of his defence, or after his address and before the finding; but under (D) of this rule may be called to rebut the evidence given by the prosecutor after the finding.

In cases of alleged desertion, the fact of the accused having surrendered or been apprehended should not be left until after the finding; it is one of the material facts of the case, and as such ought to be proved by the prosecutor; it may have some bearing on the question of whether the accused intended or not to return.

The court will not, when the accused belongs to the regular forces, take evidence of any conviction while he was a civilian. But convictions by a civil court while the accused is a soldier may be given in evidence although the offence was committed while he was in a state of absence or desertion; K.R., 553.

Evidence of expenses, loss, damage, or destruction will be taken in the course of the trial, as r. 11 (F) provides that the facts justifying any deduction from pay are to be stated in the particulars. In case such evidence has not been taken, there is nothing to prevent the court taking it after the finding, if necessary. In case of damage caused by an offence, the cause and effect must be closely related in order to warrant a sentence of stoppages. Thus an accused person would not for this purpose be said to have caused damage to a military policeman's clothes because the policeman fell down and damaged them while in pursuit of the accused when endeavouring to escape.

If two or more persons are convicted of a joint offence, each of them may be ordered to pay the whole amount of the compensation for any expenses, loss, damage, or destruction occasioned by that offence. Each of them is liable to pay the whole compensation in default of the other. If both contribute to the payment, proviso (b) to A.A. 138 (see note) will prevent either of them being charged with an undue amount, as that proviso forbids deductions more than sufficient to make good the compensation.

2. For definition of military decoration and military reward see A.A. 190 (18) and (19).

3. See A.A. 44 (11) (12). The court cannot take evidence with respect to any decoration of which the court cannot order the forfeiture, as, for example, the Companionship of the Bath or the Victoria Cross. The object of taking this evidence and evidence of the rank of the accused is for the purpose of enabling the sentence to be awarded correctly; see r. 47.

4. A statement containing a summary of the entries against the name of the accused in those books, with a statement as to his age, service, rank, &c., is to be produced, and verified by a witness as being correctly extracted from the regimental books; a witness must also identify the accused as being the person referred to in such statement. This witness should usually be the adjutant or some other officer. There is nothing to prevent the prosecutor being the witness, and the remarks in the note to r. 39 (C) do not apply. The prosecutor must, however, be sworn like any other witness; it is not sufficient that he should have been sworn as a witness before the same court on the same day in the course of the trial of some other person. If the accused challenges the correctness of the statement, the regimental books, or a duly certified copy thereof, must be produced, and the court must compare the statement with the books; see (D) of this rule.

The witness producing the statement referred to in this paragraph and identifying the accused should be the adjutant or some other officer, and the witness may be cross-examined by the accused.

5. The accused is entitled to give evidence himself to rebut the evidence given by the witnesses of the prosecution as to his character; but if he does so, he will render himself liable to be cross-examined as to character; see r. 80 and note.

6. This means a copy certified by the officer having the custody of the book; A.A. 163 (h).

7. This means such punishment as forfeiture of corps pay (see P.W. arts. 860, 862, 869, and 871 or prolongation of service of a soldier of the territorial force; see T.R.F. Act. 20 (3) and T.F. Regs. 269.

47. Where the court desire to sentence an officer,¹ to forfeit seniority of rank², they may sentence him to take rank and precedence in his corps, or in the army, or in both, as if his appointment to the rank or ranks held by him, and specified in the

Mode of forfeiting seniority of rank of officer or non-commissioned officer.

sentence, bore the date of some day or days specified in the sentence, and later than the actual date of his said appointment.

In the case of a non-commissioned officer³ the court will sentence him to take rank and precedence⁴ as if his appointment to the rank held by him, and specified in the sentence, bore the date of some day specified in the sentence, and later than the actual date of his said appointment.

1. For form, see Form of Proceedings, para. 12, p. 695.

Under this rule an officer whose commission as captain was dated on the 1st of January, 1912, may be sentenced to take rank in the army and in his regiment as if his commission bore date the 1st of March, 1913. If, for instance, it is wished to reduce a captain to the bottom of the list in his regiment he may be sentenced to take rank and precedence in his regiment and in the army as if his commission bore date on the day which is specified in the sentence, and which is the next day to the date of the commission of the junior captain of the regiment. If his rank in the army differs from that in his regiment the sentence may apply to the former only.

2. See A.A. 44, f.

3. As to effect of such a sentence in the case of a N.C.O.; see A.A. 44, notes 12 and 13.

4. See Form of Proceedings, para. 12, p. 696.

Sentence.

48. The court shall award one sentence in respect of all the offences of which the offender is found guilty,¹ and that sentence shall be deemed to be awarded in respect of the offence in each charge in respect of which it can be legally given, and not to be awarded in respect of any offence in a charge in respect of which it cannot be legally given.²

1. For form see Form of Proceedings, para. (12), pp. 695-697.

The court will award such sentence as they think the offender ought to suffer, and the judge-advocate or president will enter it at once in the proceedings. For observations on the duty of the court in awarding sentence, see Ch. V, paras. 78-88, and K.R., 583; the sentence must, of course, be authorised by the Army Act (see s. 44), and the court cannot, for example, sentence an offender to restore stolen property; though an order for restoring property found in his possession may, under A.A. 75, be made by the confirming authority or the Army Council.

2. The object of the latter portion of this rule is to prevent legal objections to the sentence. If, for example, the offender has been convicted on a charge of having made away with his regimental necessities, for which the maximum punishment under the Army Act is imprisonment, and also on a charge of desertion after a previous conviction, which is punishable with penal servitude, the court may pass a sentence of penal servitude, and that sentence will, under this rule, be valid because justified by the second charge, although not justified by the first charge. (See also r.r. 54 and 55.) This rule will apply whether the charges on which the offender has been tried are in one charge-sheet or in several charge-sheets.

Recommendation to mercy.

49. (A) If the court make a recommendation to mercy they shall give their reasons for their recommendation¹.

(B) If the court recommend any restoration of service under section 79 of the Army Act the recommendation, with the reasons for it, shall be entered in the proceedings.

(C) The number of opinions by which a recommendation mentioned in this rule, or any question relative thereto, is adopted or rejected, may be entered in the proceedings.

1. A recommendation to mercy will be appended to the sentence, and be embodied in the proceedings before they are signed by the president. See A.A. 58 (9), and note. As to exceptional character of a recommendation to mercy, see Ch. V, para. 88. For form see Form of Proceedings, para. (12), p. 697.

50. Upon the court awarding the sentence, the president shall date and sign the sentence¹, and such signature shall authenticate the whole of the proceedings, and the proceedings, upon being signed by the judge-advocate², if any, shall be at once transmitted for confirmation³.

Signing and transmission of proceedings.

1. For form see Form of Proceedings, para. (12), p. 697. It is essential that the sentence be signed by the president, as under A.A. 68, a term of penal servitude, imprisonment, or detention commences on the day on which the sentence and proceedings were signed by the president. His signature after the sentence will authenticate all the proceedings of the trial.

2. The judge-advocate (if any) will sign after the president.

3. See also r. 97. As a rule, certified copies of original documents produced in evidence by the prosecutor, and not the originals themselves, will be annexed to the proceedings; K.R., 581.

Confirmation and Revision.

51¹. (A) In the case of a finding which does not require confirmation, the confirming officer shall not make any remarks in the proceedings², but if he thinks that anything in the case requires further attention he shall report it to superior authority as directed by His Majesty's regulations.

Procedure of confirming officer.

(B) In the case of findings or sentences which require confirmation the confirming authority—

(1) May direct the re-assembly of the court for the revision of the finding or sentence, or either of them, stating the reasons for revision³; and

(2) Upon receiving the proceedings, whether original or revised⁴, may confirm or refuse confirmation, and the confirmation, or non-confirmation, shall be entered in and form part of the proceedings⁵.

1. This rule must be read in conjunction with A.A. 54 and r. 52.

2. As to remarks by confirming officer, see K.R., 589, 590.

3. A finding of insanity, in which case there is no sentence, may be sent back for revision.

A confirming officer cannot send back a part of a finding or sentence for revision; if he thinks that part only requires revision on account of invalidity or otherwise, he should return the whole, pointing out the part which he considers to require revision.

As under A.A. 54 (2) the confirming authority cannot recommend the increase of a sentence, nor can the court, on revision, for any reason increase the sentence previously awarded, the object of revision will be mainly either to cure defects in the proceedings of the court where the offender has been found guilty, or to give the court an opportunity of acquitting or passing a more lenient sentence on, the offender. If, however, the sentence is wholly illegal, it is null (see note to r. 56 (A)), and the court, on revision, have the same power of sentence as if they had passed no sentence at all. If, e.g., a regimental court martial sentenced a soldier to be discharged with ignominy, and the confirming officer sent back the sentence for revision as being null, the court might proceed to pass a legal sentence.

See generally as to the duty of a confirming officer where the proceedings are illegal or irregular, K.R., 591.

4. "Original" here means the proceedings of the court where no revision has taken place, whether from the finding or sentence not having been sent back for revision or from a revision not having taken place, in consequence of the dissolution of the court as mentioned in the note to r. 52 (A). "Revised" applies to the proceedings after the court have re-assembled for revision.

5. Confirmation should be effected simply by the word "confirmed." The word "approved" should not be added. Any remarks will be separate from, and form no part of, the proceedings. In no case will the confirming authority comment upon a finding of "not guilty," or upon the inadequacy of a sentence. For form see Form of Proceedings, para. (14), p. 699.

Procedure,
&c.

52. (A) Where the finding or sentence is sent back for revision, the court should re-assemble in closed court¹, and shall not receive any further evidence².

(B) Where the finding is sent back for revision, and the court do not adhere to their former finding, they shall revoke the finding and sentence, and record a new finding³, and, if the new finding involves a sentence⁴, pass sentence afresh.

(c) Where the sentence alone is sent back for revision, the court shall not revise the finding.

(d) After revision the president shall date and sign the decision of the court, and the proceedings, upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation.⁵

1. See r. 63. The court should re-assemble at the time mentioned in orders, which should be as soon as practicable.

When the court is assembled for revision, it is technically the same court. Consequently, if it is reduced by death, inability to attend, or otherwise, below the legal minimum (see notes to r.r. 16-19), it is dissolved, and cannot re-assemble for revision, and the proceedings must be returned, without any entry thereon, to the confirming authority. Or, again, if the president is dead or unable to attend, a new president, if the senior member of the court is of sufficient rank, must be appointed by the convening authority. See A.A. 53 (2).

2. See also A.A. 54 (2). This provision covers evidence both for the prosecution and the defence.

3. Where the finding is sent back for revision and the court adhere to the finding, they can nevertheless revise the sentence; see A.A. 54 (2) and notes to preceding rule.

4. If the finding was insanity, or was an acquittal, no sentence will be involved. For form see Form of Proceedings, para. (13), p. 698.

5. For form see Form of Proceedings, para. (13), p. 697. See also r. 97, and K.R., 592, 594-596.

Promulga-
tion.

53. The charge, finding, sentence, and confirmation of a court martial shall be promulgated in such manner as the confirming authority may direct; and if no direction is given, according to the custom of the service¹.

1. As to promulgation, see K.R., 593. For form of promulgation, see p. 699.

A finding of acquittal on all charges is directed by A.A. 54 (3), to be pronounced at once in open court. No further promulgation is required. In every other case the charge, finding, sentence, and confirmation must, under this rule, be promulgated. Consequently, if the finding on some of the charges is acquittal, and on others conviction, the finding of acquittal must be promulgated, together with the finding of conviction; and a finding of conviction, though not confirmed, will still be promulgated.

In the absence of any direction by the confirming authority, the usual custom of the service will be followed, but a written notice to the offender of the charge, finding, sentence, and confirmation will be sufficient promulgation to satisfy this rule.

As to the execution of sentence, see Ch. V, paras. 100-3, and generally as to the disposal of soldiers under sentence, K.R., 600, *et seq.*

Under A.A. 53 (9), a recommendation to mercy must be promulgated and communicated to the offender, together with the finding and sentence. The confirming officer may direct observations recorded by him to be communicated in a separate minute to the members of the court, or in the orders of the command, as he may think most desirable. K.R. para. 589.

If a sentence of penal servitude, imprisonment, or detention is confirmed, then, in default of any committal by superior authority, the C.O. of the offender, as soon as may be after the promulgation of the sentence, will sign the order for his committal to some prison or detention barrack in accordance with any general or special instructions he has received from superior authority. K.R., 602, 608. As to commitment abroad. K.R., 603, 609-612.

54. (A) Where a sentence has been awarded by court-martial in respect of offences in several charges, and the confirming authority confirms the finding on some but not on all of those charges, that authority shall take into consideration the fact of such non-confirmation, and shall, if it seems just, mitigate, remit, or commute the punishment awarded according as seems just, having regard to the offences in the charges the findings on which are confirmed¹.

Mitigation of sentence on partial confirmation.

(B) Where a sentence has been awarded by a court-martial in respect of offences in several charges and has been confirmed, and any one of those charges or the finding thereon is found to be invalid, the authority having power to mitigate, remit, or commute the punishment awarded by the sentence shall take into consideration the fact of such invalidity, and if it seems just, mitigate, remit, or commute the punishment awarded according as seems just, having regard to the offences in the charges which with the findings thereon are not invalid, and the punishment as so modified shall be as valid as if it had been originally awarded only in respect of those offences².

(C) Where a sentence passed by a court-martial has been confirmed, and is found from any reason to be invalid, the authority who would have had power to commute the punishment awarded by the sentence if it had been valid may pass a valid sentence, and the sentence so passed shall have the same effect as if passed by the court-martial, but the punishment awarded by that sentence shall not be higher in the scale of punishments than the punishment awarded by the invalid sentence, nor, in the opinion of the said authority, be in excess of the last-mentioned punishment³.

1. E.g. Where a man has been convicted on one charge of desertion after a previous conviction, and on another charge of having made away with his regimental necessaries, and has been sentenced to penal servitude, and the confirming officer confirms the finding on the second charge, but not that on the first charge, which justified the sentence of penal servitude, he is bound under this rule to commute the sentence at least to imprisonment.

If the second charge in the above case were striking an officer, and the confirming officer refuses to confirm the finding on that charge while confirming the finding on the first charge, it will be his duty to consider whether the sentence of penal servitude is not too severe for the offence of desertion unaccompanied by aggravating circumstances, and if he thinks so, he will commute it to some less punishment. See generally, as to the duty of the confirming officer in the exercise of his powers of commutation or mitigation; K.R., 588.

2. The object of this paragraph is to allow any permanent authority to do after confirmation what (A) allows to be done before confirmation, that is to say, to provide that if one of several charges is found to be invalid, the commuting authority may mitigate or commute the sentence, so as to make it a valid sentence in respect of any other charge which is valid.

3. This paragraph enables the commuting authority to substitute a valid sentence for a sentence found after confirmation to be invalid.

55. (A) Where a special finding has been recorded in relation to alternative charges under Rule 44 (F)¹, and the confirming authority is of opinion that the facts found by the special finding constitute in law the offence charged by any of the alternative charges, that authority may confirm the finding, and in that case shall declare that the finding amounts to a finding of guilty on that charge; but if it is afterwards declared by any authority having power to remit or commute the punishment awarded that the said facts constitute in law the offence charged in one of the other alternative charges, then the confirming authority, or such other authority as aforesaid, may declare that the finding amounts to a finding of guilty on that

Confirmation of finding on alternative charges.

alternative charge; and the finding shall be a valid finding of guilty on the charge specified in that behalf in the declaration made on confirmation, or, in case of a subsequent declaration, in that subsequent declaration.

(B) The sentence awarded in the case of any such special finding may likewise be confirmed, subject to this proviso, that if the offence in one of the alternative charges involves a higher punishment, or is otherwise graver, than the offence in the charge of which the offender is found to be guilty under the terms of any declaration mentioned in (A), the authority making the declaration, or some other authority having power to mitigate, remit, or commute the punishment awarded, shall mitigate, remit, or commute the punishment according as seems just, having regard to the last-mentioned offence; and the punishment as so modified shall be as valid as if it had been originally awarded in respect of the last-mentioned offence.

1. See note 6 to r. 44. For forms see Form of Proceedings, para. (14) p. 699.

Confirmation not-withstanding informality in, or excess of, punishment.

56. (A) If the sentence of a court-martial is informally expressed, the confirming authority may, in confirming the sentence, vary the form so that it shall be properly expressed; and if the punishment awarded by the sentence is in excess of the punishment authorised by law, the confirming authority may vary the sentence so that the punishment shall not be in excess of the punishment authorised by law; and the confirming authority may confirm the finding and the sentence as so varied of the court-martial¹.

(B) Whenever it appears that a court-martial had jurisdiction to try any person, and that that person was charged with some offence or offences under the Army Act, and was shown by legal evidence to have been guilty of the offence or one of the offences charged, the finding in respect of the offence or offences of which he is so shown to be guilty, and the sentence, may be confirmed, and if so confirmed shall be valid, notwithstanding any deviation from these rules or any defect or objection, technical or other, unless it appears that any injustice has been done to the offender; but nothing in this rule shall relieve an officer from any responsibility for any wilful or negligent disregard of any of these rules².

1. The object of this paragraph is to prevent the proceedings of courts-martial being rendered invalid, when they cannot be sent back for revision without great inconvenience to the public service. It will not exonerate from blame the presidents and members of courts-martial who pass sentences which are informal, or in excess of their powers, and confirming officers will, if practicable, send the finding and sentence back for revision, and if they act under this rule, will call the attention of the court to the informality or illegality of the sentence.

The confirming authority may vary the form in which a sentence is expressed, but cannot amend a sentence wholly illegal; as, for example, if an officer convicted of scandalous conduct were sentenced to dismissal, or if a soldier were sentenced by regimental court-martial to be discharged with ignominy, or if a non-commissioned officer were sentenced to be reduced to the rank of lance-corporal, or to be reprimanded, or if a soldier were sentenced to be confined to barracks, or if a soldier not on active service were sentenced to field punishment.

In any such case the confirming officer should treat the sentence as a nullity, and direct the court to re-assemble and pass a valid sentence. This proceeding would not be a revision of the sentence, so that the law prohibiting the increase of punishment on a revision would not apply, and the sentence in the case above mentioned of the officer might be cashiering, and of the non-commissioned officer might be reduction to the ranks, or forfeiture of seniority of rank.

Where, however, the punishment exceeds what is authorised by law, the confirming authority can, though such sentence is illegal, vary the sentence so as to bring it into conformity with law, and confirm it as varied.

2. This paragraph will prevent a miscarriage of justice arising in consequence of defects in the procedure which do not affect the real merits of the case. These defects will usually be of a technical character, as any substantial defect, such as accepting hearsay evidence, or using a copy of a document where the original ought to have been produced, or calling a witness without proper notice to the accused, or refusing to admit evidence adduced by the accused, would ordinarily cause injustice to the person charged. As the law of this country always resolves any doubt in favour of the accused, the court should never allow any technicality to interfere with the accused making his defence in the fullest manner, and while as a whole disregarding technicalities in favour of what they consider to be, in substance, fairness for the purpose of the trial, they must recollect that even a disregard of a technicality may, in some cases, cause injustice, as the object of most technical rules is to prevent injustice. Before, therefore, a confirming officer, in reliance on this rule, confirms a finding and sentence in any respect irregular, he must take care to ascertain that no injustice, however small, has been done to the accused; and the preferable course is, where possible, to send the case back for revision or for another trial. In every case the confirming officer will call the attention of the officer responsible for the irregularity to the deviation from the rule, or the defect in the proceedings; as officers will be held responsible for such deviation or defect, even though under this rule the conviction of the accused may be upheld.

It may be convenient to note here that if, after confirmation, the charges or the findings thereon are declared to be invalid, the trial must be treated as null, and consequently the person convicted must be relieved from all consequences of his conviction, and all record of the conviction must be erased; but in cases where the sentence alone is invalid the finding will stand good, and therefore the soldier convicted will suffer the forfeitures and other penalties which are consequential on conviction.

Where punishment is remitted, that remission, unless otherwise expressed, will not extend to forfeiture of service or good conduct pay, or to any forfeiture which he suffers by virtue of his conviction, without being sentenced to it. K.R., 591.

Insanity.

57. (A) Where the court find either that the accused is unfit, by reason of insanity, to take his trial, or that he committed the offence with which he is charged, but was insane at the time of the commission thereof, the president shall date and sign the finding, and the proceedings, upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation.¹

Provisions as to finding of insanity, and custody of insane person.

(B) If the finding is not confirmed, the accused may be tried by the same or another court-martial for the offence with which he was originally charged.

(C) Where the finding is confirmed, then, until the directions of His Majesty as to the disposal of the accused are known, or in the case of an accused person unfit to take his trial, until any earlier time at which the accused is fit to take his trial, the accused shall be confined in such manner as may, in the opinion of the proper military authority, be best calculated to keep him securely without unnecessary harshness, as he is not to be considered as a criminal but as a person labouring under a disease.

1. It is to be observed that two distinct cases are contemplated. A person may have been sane at the time he committed the offence, but may not be sane enough to take his trial; while, on the other hand, a man insane at the time of committing the offence, may have recovered sufficiently to take his trial. In the former case, if an accused person, found not sane enough to take his trial, recovers before any directions of His Majesty as to his disposal are known, he should be ordered for trial.

2. This rule supplements A.A. 180 which requires a finding of insanity to be confirmed like any other finding. If, therefore, it is not confirmed, the trial of the accused must proceed in the ordinary course.

For form see Form of Proceedings, para. (11), p. 692.

General Provisions as to Proceedings of Court.

Seating of
members.

58. The members of a court-martial will take their seats according to their army rank, except that in the case of a regimental court-martial consisting entirely of officers of the same corps¹, they will take their seats according to their rank in that corps¹.

1. As to meaning of "corps," see A.A. 190 (15).

Responsi-
bility of
president.

59. (A) The president is responsible for the trial being conducted in proper order and in accordance with the Army Act, and will take care that everything is conducted in a manner befitting a court of justice¹.

(B) It is the duty of the president to see that justice is administered, and that the accused has a fair trial, and that he does not suffer any disadvantage in consequence of his position as a person under trial, or of his ignorance, or of his incapacity to examine or cross-examine witnesses or to make his own evidence clear or intelligible, or otherwise².

1. The court should always have before them a copy of the Army Act, of the King's Regulations, and of the Rules of Procedure, and of any other official books or orders relating to courts-martial which are necessary for the purpose of its proceedings.

2. The president should, like the judge of a civil court, act as counsel for an accused person not defended by counsel. He will therefore cause to be called before the court any witness, though not called either by the prosecution or the defence, whom he considers able to give material evidence to the court, and a witness so called may be cross-examined by the prosecutor and the accused (see r. 78); the president has, however, no power to call the accused as a witness (see r. 80). The president will also put to the witnesses (including the accused if he gives evidence) any questions which appear to him necessary or desirable to elicit the truth. In particular, he should put questions to the accused (if he gives evidence) for the purpose of enabling him to explain any circumstances appearing in the evidence for the prosecution; but he must not cross-examine the accused, and should not put questions to him with a view to supplement the evidence for the prosecution.

It will also be the duty of the president to take care that the accused does not suffer any prejudice in consequence of his inability to put proper questions to witnesses, or of his not being able, in giving evidence, to bring out clearly the points which he wishes brought out, or of his not fully understanding the nature of the proceedings. The president will also examine the summary of the evidence, and if a witness gives different evidence from what is there recorded, will question him as to the difference.

If there is a judge-advocate he has a similar duty; r. 103 (G). The presence of a judge-advocate, however, does not relieve the president from his duty under this rule.

Power of
court over
address of
prosecutor
and
accused.

60. (A) It is the duty of the prosecutor to assist the court in the administration of justice, to behave impartially, to bring the whole of the transaction before the court, and not to take any unfair advantage of, or suppress any evidence in favour of, the accused¹.

(B) The court may stop the prosecutor in referring to any matter not relevant to the charge² then before the court, or any matter which the court is not investigating, and it is the duty of the court to restrain any undue violence of language or want of fairness or moderation on the part of the prosecutor, and to prevent the prosecutor from commenting³ at any time on the failure of the accused or his wife to give evidence.

(C) The court should allow great latitude to the accused in making his defence⁴; he must abstain from any remarks contemptuous or disrespectful towards the court, and from coarse and insulting language towards others, but he may for the purposes of his defence impeach the evidence and the motives of the witnesses and prosecutor, and charge other persons with blame and even criminality

subject, if he does so, to any liability to further proceedings to which he would otherwise be subject. The court may caution the accused as to the irrelevance of his defence, but should not, unless in special cases, stop his defence solely on the ground of irrelevance.

1. The prosecutor is an officer for securing that justice is done, not a partisan to obtain a conviction, independently of the justice of the case (see Ch. V, para. 57). Therefore he should prove, either by witnesses called for the purpose, or by the examination of his other witnesses, any facts which show the true character of the offence, whether they tend to aggravate or alleviate it, or to show the innocence of the accused, and he must be especially careful to prove any facts tending either to show the innocence of the accused, or to extenuate his offence. If, for example, the accused is charged with insubordinate language to his superior officer, and there are circumstances of provocation, which, if proved, might mitigate the punishment, though not justifying an acquittal, the prosecutor should call evidence to prove those circumstances.

Again, many acts are only offences when done knowingly or with a certain intent. *Prima facie* it lies on the prosecution to show that the accused had the guilty knowledge which constitutes the offence; but absolute proof of guilty knowledge or intent is frequently impossible, and it can only be inferred from the circumstances. This inference the court is at liberty to draw, unless the accused produces evidence to rebut it; but in this, as in every other case, all facts which tend to show either the existence or the absence of the intent or knowledge on the part of the accused must be brought out by the prosecutor. For example, if the accused is charged with desertion, and the prosecutor is aware that, though found in plain clothes, he had either received leave of absence, or leave to be in plain clothes, the prosecutor should prove that leave. So, too, if a soldier is charged with attempting to desert, and the evidence is that he went to a railway station and took a ticket for (say) Liverpool, and the fact is that several other soldiers in possession of passes took tickets for Liverpool at the same time, the latter fact should be brought out; as it gives a different complexion to the fact of taking a ticket, which of itself might be strong evidence against the accused.

The prosecutor must not introduce into the evidence against the accused any matters of aggravation which do not form part of the transaction in respect of which the accused is charged before the court, nor, as a rule, matters which, if true, are specific military offences with which the accused might be charged. If, for instance, he is charged with desertion, the prosecutor must not introduce, by way of aggravation, that he has been insolent or insubordinate, or that he had been previously drunk. On the other hand, if a soldier is charged with serious acts of insubordination, including violence to an escort, and the soldier was drunk, that fact should be brought out in the examination of the witnesses. Not only is the drunkenness part of the circumstances of the case, but it may modify the character of the offences, see Ch. III, para. 81; K.R., 575.

If the trial is in consequence of the accused having claimed a court-martial instead of submitting to the jurisdiction of his commanding officer, that fact should be stated by the prosecutor. See Form of Proceedings, para. (8), p. 682.

2. What is and what is not relevant to any charge is in some cases a matter of considerable difficulty (see Ch. VI., paras. 16-29); but in ordinary cases common sense will determine whether the matter referred to does or does not bear on the particular charge before the court (*ib.*). Anything which tends to show that the accused committed the offence mentioned in the charge, or to show the true character of the offence (see note 1 *sup.*), is, ordinarily speaking, relevant.

3. If any such comment is contained in a written address, it should be struck out and not read.

4. The right of the accused in making his defence is stated in this paragraph, and is not affected by his right to give evidence himself, whether he avails himself of that right or not. If his charge against other persons of blame or criminality is made merely for the purposes of his defence, and is in any degree justified by the facts, he will not incur liability; but if his charges against others are wholly irrelevant to his defence, or if they come within the provisions of A.A. 27 relating to false accusations, he is liable to be proceeded against accordingly. The court may caution him as to such liability, but should not do so if there is any connection whatever between the charge and his line of defence. The case must

be very special indeed to justify the court in stopping an accused person in his defence, or in excluding, on the ground of irrelevancy, evidence offered by him, or to justify any further proceedings against an accused person on account of his defence. The court should, however, caution him that if he so conducts his case as to throw discredit on the witnesses for the prosecution, he will, if he gives evidence himself, render himself liable to cross-examination as to character: see r. 80 and note.

Where a person tried for desertion made in his defence statements reflecting on the officers of the regiment as the reason for the prevalence of crime in the regiment, it was held that the defence, although the statements in it were eventually proved to be false, was not wholly irrelevant, as the accused might have hoped that the statements would lead to a mitigation of his punishment; and it was also held that the proper course was, not to try the offender again for the purpose of ascertaining the truth of his statements, but to hold a court of inquiry for that purpose.

Procedure
on trial of
accused
persons
together.

61. Where two or more accused persons are tried together and any evidence is tendered by any one or more of them, the evidence and addresses on the part of all the accused persons will be taken before the prosecutor replies, and the prosecutor will make one address only in reply as regards all the accused persons¹.

1. See note to r. 71 (C). As to the effect of one accused person giving evidence against another charged with the same offence, see r. 80 (3) (O).

Separate
charge-
sheets.

62. (A) Where the convening officer directs any charges against an accused person to be inserted in different charge-sheets, the accused shall be arraigned, and until after the finding tried, upon each charge-sheet separately, and accordingly the procedure in Rules 31 to 44, both inclusive, shall, until after the finding, be followed in respect of each charge-sheet, as if it contained the whole of the charges against the accused¹.

(B) The trials upon the several charge-sheets shall be in such order as the convening officer directs².

(C) When the court have tried the accused upon all the charge-sheets they shall, in the case of the finding being "Not guilty" on all the charges, proceed as directed by Rule 45, and, in case of the finding on any one or more of the charges being "Guilty," proceed as directed by Rules 37 and 46 to 50, both inclusive, in like manner in each case as if all the charges in the different charge-sheets had been contained in one charge-sheet, and the sentence passed shall be of the same effect as if all the charges had been contained in one charge-sheet³.

(D) If the convening officer directs that, in the event of the conviction of an accused person upon a charge in any charge-sheet, he need not be tried upon the subsequent charge-sheets, the court in such an event may, without trying the accused upon any of the subsequent charge-sheets, proceed as directed by (c.)⁴.

(E) Where a charge-sheet contains more than one charge, the accused may, before pleading, claim to be tried separately in respect of any charge or charges in that charge-sheet, on the ground that he will be embarrassed in his defence if he is not so tried separately; and in such a case the court, unless they think his claim unreasonable, shall arraign and try the accused in like manner as if the convening officer had inserted the said charge or charges in different charge-sheets⁵.

(F) If the accused pleads "Guilty" to a charge in a charge-sheet, and the trial does not proceed (as mentioned in Rule 37 (A)) with respect to the other charges in that charge-sheet, the court shall, subject to the directions of the convening officer, proceed to try the accused on the charges in the next charge-sheet before they proceed as directed by Rule 27 (B) and (c.)⁶.

1. Most of the ordinary cases which come before courts-martial are so simple in their facts that an accused person is not embarrassed by being tried at the same time for several charges; but embarrassment will certainly arise if the facts of any of the charges are very complicated, or if the alleged offences were committed at different times, or if different sets of witnesses are required to prove the different offences. In such cases, even practised advocates and judges find a great difficulty in keeping the different charges and the evidence on each charge distinct, and still more will the difficulty be felt by a soldier and by a court not constantly accustomed, like a civil court, to deal with evidence.

In such cases, therefore, as a general rule, the convening officer should cause the charges to be inserted in separate charge-sheets.

The cases which are likely to arise may be classified as follows:—

Case No. 1. (Single offence repeated on different days.) The first case arises where the accused has been guilty of the same description of offence on two or more different days. *e.g.*, a soldier steals from a comrade a watch on Monday, a pair of shoes on Tuesday, a pair of stockings on Wednesday, and so forth. Supposing he had stolen all these articles at the same time, it would have constituted the same offence, but if he steals them on separate days, the offences are obviously distinct.

Case No. 2. (Several offences forming part of one wrongful transaction.) A more difficult case arises where the set of acts of which a person has been guilty are in fact part of one wrongful transaction, so to speak, and yet involve several military offences of different descriptions. *e.g.*, a soldier, being drunk, uses insubordinate language to his serjeant, knocks him down, and then absents himself. He commits four offences (1) drunkenness; (2) insubordinate language to his superior officer; (3) striking his superior officer; (4) desertion (or absence without leave.)

Case No. 3. (Several offences, not forming part of the same wrongful transaction.) Another case arises where several offences of different descriptions have been committed by the same person, but at different times. Such a case would arise if in the preceding case the desertion, or absence without leave, had taken place some time after the commission of the previous offences, and in such manner that they could not be deemed part of the same wrongful transaction.

In case No. 1, the offences being of the same description, may as a general rule, be contained in the same charge-sheet; but many offences of the same description should not be inserted in the same charge-sheet, as to do so might embarrass the accused in his defence. Usually it will be undesirable to insert more than three charges for offences of the same description in the same charge-sheet, unless the offences have been part of a system, as, for instance, a system of embezzlement carried on by the accused, in which case it may not be improper to increase the number of charges.

In case No. 2, four offences constitute one wrongful transaction, and therefore may be included in the same charge-sheet, but if they are so included, the accused must not at the same time be charged in the same charge-sheet with any previous offence of the same description; as, for instance, any previous offence of striking his superior officer, or of desertion, &c.

In case No. 3, if the accused is charged both with striking his superior officer and with desertion, or absence without leave, the latter offence should not be included in the same charge-sheet as the former.

In practice, in such an instance as case No. 2, the serious offences of striking a superior officer and of desertion or absence without leave, should alone be charged. Indeed, it is advisable as far as possible to avoid charging an accused person with more than one offence, as a multiplicity of charges leads to unnecessary trouble and confusion; and if the gravest of several offences is selected, the punishment will in all probability be sufficient to satisfy the ends of justice. It may, however, in some cases be necessary to prove several offences, in order to guide the court as regards the proper amount of punishment.

Assuming that it is doubtful whether one or more of a set of offences can be proved, it will of course be advisable to omit any offence the evidence with respect to which is doubtful, and to bring before the court those charges only of which the proof appears to be sufficient.

The result of the above remarks is as follows (see also Note as to use of Forms of Charges, p. 646):—

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(i) Repeated instances of the same description of offence may be included in the same charge-sheet, though each instance must constitute a separate charge. (See, however, as to desertion and fraudulent enlistment, note to A.A. 12.)

(ii) Offences of different descriptions should be included in separate charge-sheets, except where they form part of the same wrongful transaction.

(iii) If offences of different descriptions are included in one charge-sheet as forming part of one wrongful transaction, any act other than an act which forms part of that wrongful transaction should not be charged as an offence in the same charge-sheet.

Where one offence has in fact been committed, but doubt arises as to what particular description of offence has been committed, one charge-sheet may include alternative charges for offences of different descriptions, but each charge will refer to the same set of particulars.

Where the accused is arraigned on charges in separate charge-sheets, care must be taken that the trial proceeds upon each charge sheet separately until after the finding in each case.

2. The convening officer will regulate the order for the trial of different charge-sheets according to the gravity of the offence and the convenience of summoning the witnesses, or other circumstances. It is desirable to try first the gravest offence, as, if the accused is convicted, he will be sufficiently punished without trying him on the minor offences. In some cases, it may be better to try an accused person on a simple case first, so as to avoid the necessity, if he is convicted upon that, of trying him for an offence where the case is complicated, and the number of witnesses is large.

3. It will be observed, that the separation of charges in different charge-sheets is merely for the purpose of enabling the court and the accused to keep distinct in their minds the different cases and the evidence thereon, with a view to the accused making a proper defence, and the court arriving at a proper finding, without being confused by evidence on entirely distinct cases; and that the result, when the time for sentence is reached, is the same as if the accused had been tried at the same time on all the charge-sheets. Unless, therefore, the convening officer directs under (D) that the accused need not be tried upon the subsequent charge-sheets, the court will not sentence the accused until they have disposed of all the charge-sheets, and will then award one sentence in respect of all the charges contained in the different charge-sheets of which the accused has been found guilty.

4. It will often be unnecessary, if the accused is convicted of a grave charge contained in one charge-sheet, to proceed with any other or minor offences contained in the other charge-sheets; it may, however, in some cases be necessary to try the accused on a subsequent charge-sheet, in order to justify a more severe sentence for the offence charged in the first charge-sheet.

5. The court should always, unless they think the claim very unreasonable, accede to a demand to be tried separately in respect of any particular charge.

6. The object of this is only to provide that all the charge-sheets should be disposed of before the court proceed to sentence the offender; in the case of "Not guilty," this is provided for by (C).

Sitting in
closed court.

68. (A) When a court-martial sit in closed court on any deliberation amongst the members or otherwise, no person shall be present except the members of the court, the judge-advocate, and any officers under instruction; and the court may either retire or may cause the place where they sit to be cleared¹ of all other persons not entitled to be present.

(B) Except as above-mentioned, all the proceedings, including the view² of any place, shall be in open court³ and in the presence of the accused.

1. See A.A. 53 (5).

2. See A.A. 53 (7). All the members must proceed to view any place, and the accused must be present there; usually the court will adjourn for the purpose to the place to be viewed.

3. This does not control the power of the court to exclude a person who interferes with the proceedings—a power incident to every court as necessary for the proper conduct of the proceedings, though it does not extend to the exclusion of the accused, as the trial cannot proceed in his absence.

64. (A) A court-martial may sit at such times and for such period between the hours of six in the morning and six in the afternoon, as may be directed by the proper superior military authority, and so far as no such direction extends, as the court from time to time determine¹. Time for trial.

(B) If the court consider it necessary to continue a trial after six in the afternoon they may do so, but if they do so should record in the proceedings their reason for so doing.

(C) In cases requiring an immediate example, or when the convening officer, or the general or other officer commanding any body of troops, certifies² under his hand that it is expedient for the public service, trials may be held at any hour.

(D) If the court or the convening officer, or other superior military authority, think that military exigencies or the interests of discipline require the court to sit on Sunday, Christmas Day, or Good Friday, the court may sit accordingly³, but otherwise the court should not sit on any of those days.

1. See K.R., 579, and r. 65 and note.

2. This certificate should be annexed to the proceedings.

3. The reason for sitting should be annexed to, or entered in, the proceedings.

65. (A) When a court is once assembled and the accused has been arraigned, the court should (but subject to the provisions of the Army Act¹, and of these rules as to adjournment²) continue the trial from day to day and sit for a reasonable period³ on every day⁴, unless it appears to the court that an adjournment is necessary for the ends of justice, or that such continuance is impracticable. Continuity of trial and adjournment of court.

(B) A court-martial in the absence either of a president⁵, or of a judge-advocate (if a judge-advocate has been appointed for that court-martial), shall not proceed, and if necessary shall adjourn.

(C) The senior officer on the spot may also, for military exigencies⁶, adjourn or prolong the adjournment of the court.

(D) Any adjournment may be made from place to place⁷ as well as from time to time. If the time to which the adjournment is made is not specified, the adjournment will be until further orders from the proper military authority; if the place to which the adjournment is made is not specified, the adjournment will be to the same place or to such place as may be specified in further orders from the proper military authority.

1. A.A. 53 (6) authorises the court to adjourn from time to time without any restriction. It is, however, very important that a trial by court-martial, once begun, should proceed with strict regularity and without interruption, to its conclusion. This rule, therefore, requires the court to sit continuously from day to day, unless it is impracticable to do so, or unless an adjournment is necessary for the ends of justice.

Thus the court may adjourn on account of the illness of the accused, or for the purpose of viewing any place, or of securing the attendance of witnesses (see r. 79), or of obtaining evidence from recusant witnesses, or of obtaining the opinion of the Judge-Advocate-General, or for reference to the convening or confirming officer on any question, or for any purpose, if the court are of opinion that such adjournment is necessary for the ends of justice; see note to r. 76. The court, however, should not as a rule permit an adjournment for the purpose of obtaining further evidence on the part of the prosecution, and should only adjourn for the production of evidence for the accused, where they consider that he has not previously had sufficient opportunity for procuring his witnesses, or where it would be unjust to the accused not so to adjourn. Great care must be taken, both by the prosecutor and by the accused, to have ready at the trial all the witnesses and documents they desire respectively to produce. The court should adjourn, if an adjournment is requested by the accused to prepare his defence, by the prosecutor to prepare his reply, or by the judge-advocate to prepare his summing-up.

In the event of the illness of a member, the court may, if not reduced below its legal minimum, either proceed without him, or adjourn, as they think proper; but if reduced below the legal minimum, r. 66 applies.

When a court adjourns before the conclusion of the trial, the adjournment is to be entered in the proceedings (see Form of Proceedings, para. (5), p. 685), and either announced in court in the presence of the accused, or communicated to the prosecutor and accused.

2. See r.r. 14 (D), 18, 22 (C), 23 (B), 25 (G), 33 (B), 34 (C), (D), 44 (E), (F), 65 (B), (C), (D), 67, 76, 79, 102.

3. Sittings of six or seven hours will be found, as a rule, quite long enough, and they should not be further protracted without some special reason; K.R., 579. Too long sittings unduly strain the attention of the members, and may operate unfairly to the accused, as at the close of a long sitting he cannot properly make his defence.

4. Except Sunday, &c., see r. 64 (D).

5. If the president dies, or is unable to attend, the convening authority may appoint the senior member of the court (being of sufficient rank) to be president, assuming the court not to be reduced below the legal minimum. If he is not of sufficient rank, the court will be dissolved; A.A. 58 (2). Where the inability of the president to attend is merely temporary, no new appointment will be necessary, and the court will adjourn till he is able to attend. The senior member will always report the fact of the death, or inability to attend, of the president, to the convening authority; r. 66 (A).

6. These can seldom occur, except on active service.

7. This meets the case of a view, as well as of a court-martial held on the line of march; also the case of adjournment to the quarters of a sick witness, for the purpose of taking his evidence.

Suspension of trial.

66. (A) Where, in consequence of anything arising while the court are sitting¹, the court are unable by reason of dissolution² (as specified in section 53 of the Army Act, or otherwise), or of the absence of the president, to continue the trial, the president, or in his absence, the senior member³ present, will immediately report the facts to the convening authority⁴.

(B) Where a court-martial is dissolved before the finding, or, in case of a finding of guilty, before the sentence, the proceedings are null, and the accused may be tried before another court-martial.

1. Anything which occurs while the court are not sitting will usually be reported in some other way to the convening authority; if not, it should be reported as directed by this rule.

2. A court is dissolved if, after the commencement of the trial, the court is, by death or otherwise, reduced below the legal minimum (see notes to r.r. 17-19); or if, on account of the illness of the accused before the finding (see next rule), it is impossible to continue the trial; or if, on the failure of the president, a new president cannot be appointed; A.A. 58 (1) (2) (3).

3. *I.e.*, senior according to the rank in which they take their seats; see r. 58.

4. For form see Form of Proceedings, para. (5), pp. 685, 686.

Proceeding on death or illness of accused

67. In case of the death of the accused or of such illness of the accused as renders it impossible to continue the trial, the court will ascertain the fact of the death or illness by evidence¹, and record the same, and adjourn, and transmit the proceedings to the convening authority.

1. See A.A. 53 (3) and note. This evidence will be taken on oath or solemn declaration, in the same manner as on the trial.

Presence throughout of all members of court.

68. (A) A member of a court who has been absent while any part of the evidence on the trial of an accused person is taken can take no further part in the trial by that court of that person, but the court will not be affected except as provided by section 53 of the Army Act¹.

(B) An officer cannot be added to a court-martial after the accused has been arraigned².

1. That is, unless it is reduced below the legal minimum, and so dissolved under 53 A.A.

2. See Ch. V, para. 49.

69. (A) Every member of a court must give his opinion on every question which the court has to decide, and must give his opinion as to the sentence, notwithstanding that he has given his opinion in favour of acquittal. Taking of opinions of members of court.

(B) Subject to the provisions of the Army Act¹, every question shall be determined by an absolute majority² of the opinions of the members of the court, and in the case of an equality of opinions the president's second or casting vote will be reckoned as determining the majority.

(C) The opinions of the members of the court should be taken in succession, beginning with the junior in rank³.

1. See A.A. 48 (8), 53 (8), and 51 (3) and (5).

2. Otherwise a punishment might be imposed by a minority. For instance, if the punishment proposed by four members was penal servitude, by three imprisonment, and by two a forfeiture, the penal servitude might be imposed, although five members were opposed to it. In order to obtain the absolute majority, it will be desirable first to take the opinion of the members of the court as to the nature of the punishment to be awarded, that is to say, penal servitude, imprisonment, detention, cashiering, forfeiture, or other punishment.

Where opinions differ as to the nature of punishment, the most lenient should be put first, then the next most lenient, and so forth, the most severe being put last. Any member who is in favour of the most lenient punishment, if overruled, will, of course, give his opinion in favour of the next most lenient, and will not oppose this because he is desirous of having the punishment still more lenient.

For example, if the court consist of nine members, of whom four are in favour of penal servitude, three of imprisonment, and two of a forfeiture, the forfeiture will be put first to the court, and when negatived, the imprisonment will be put next. The members who were in favour of forfeiture will, of course, vote for imprisonment as against penal servitude, and thus five votes will be given in favour of imprisonment, being an absolute majority of the court.

When the nature of the punishment has been determined, the quantum of punishment must be ascertained; that is to say, in the case of imprisonment or detention, the number of months or days of imprisonment or detention.

As before, the most lenient proposal will be put first, and a member who is in favour of the shortest term of imprisonment will, of course, support the next shortest term, rather than support a longer term, and will not give his opinion against the next shortest term merely because he desires to have a term shorter still.

For example, if in a court of nine members two members desire to award 84 days' imprisonment, two others 112 days', another six months', and the other four ten months, the 84 days' will be put first, and, when negatived, the 112 days' will be put next, and will be supported by the members who wished for 84 days, but will be opposed by the members who desire a longer term. The six months will next be put, and will be supported by those who desire to award 84, and 112 days, so that the ultimate sentence will be six months' imprisonment.

It is not a proper course of proceeding to take the terms of imprisonment or other punishment proposed by each member, and strike an average; but naturally in the course of discussion among the members of the court, some punishment intermediate between the most severe and most lenient punishment proposed by the different members will usually be arrived at, without necessarily resorting to actual voting, as in the above examples.

3. The opinion of each member is taken separately on each charge; r. 48 (B). If there is a judge-advocate, the opinions are taken by him; if there is not, then by the president.

The oath taken by the members of the court operates, as a general rule, to prevent the opinions of individual members being disclosed; see note 2 to A.A. 52 (1). "Junior in rank" means junior in the rank in which they take their seats.

Procedure
on inci-
dental
question.

70. If any question¹ should arise incidentally during the trial, the person, whether prosecutor or accused, requesting the opinion of the court is to speak first; the other person is then to answer, and the first person is to be allowed to reply.

1. This rule will apply to such questions as the admissibility of evidence, the propriety of any question, or the recalling of a witness.

Swearing of
court to try
several
accused
persons.

71. (A) A court may be sworn at the time to try any number of accused persons then present before it, whether those persons are to be tried together or separately, and each accused person shall have power to object to the members of the court, and shall be asked separately whether he objects to any member¹.

(B) In the case of several accused persons to be tried separately, the court, upon one of those persons objecting to a member, may, according as they think fit, proceed to determine that objection or postpone the case of that person, and swear the members of the court for the trial of the others alone².

(c) In the case of several accused persons to be tried separately, the court, when sworn, shall proceed with one case, postponing the other cases, and taking them afterwards in succession³.

1. Under this rule it will not be necessary, where there are several accused persons to be tried separately, to go through the process of swearing the court for each, but all the accused may be brought up together, and the proceedings for objections to and swearing the members (see r.r. 25 to 30) may be gone through for all the accused at the same time. After the members are sworn, those persons who are not then to be tried will be removed. This course of procedure will not affect the position of the court, which will, as heretofore, be a separate court for the trial of each case, and, as heretofore, the swearing of the court will be mentioned in the proceedings of each separate case.

2. It need hardly be observed that when, in consequence of an objection by one accused a new officer serves, the other accused persons who before made no objection to the court will have the right to object to the new officer.

3. It is obvious that in the case of several accused persons being tried together, each person will be called on separately to plead and make his defence, and a finding must be arrived at separately for each person accused; and each person accused found guilty must be separately sentenced, and a separate record accordingly will be made in the proceedings. It may be proper to make a distinction between the sentences of persons found guilty of the same offence, having regard to rank, character, degree of criminality, or other considerations.

Swearing of
interpreter
and short-
hand
writer.

72. (A) At any time during the trial an impartial person may, if the court think it necessary, and shall, if either the prosecutor or the accused requests it on any reasonable ground, be sworn to act as interpreter¹.

(B) An impartial person may at any time of the trial, if the court think it desirable, be sworn to act as a shorthand writer¹.

(c) Before a person is sworn as interpreter or shorthand writer, the accused should be informed of the person who is proposed to be sworn, and may object² to the person as not being impartial; and the court, if they think that the objection is reasonable, shall not swear that person as interpreter or shorthand writer.

1. It will often be convenient to swear a shorthand writer and interpreter at the same time as the members and officers of the court are sworn, but this is not obligatory. For form of oath and solemn declaration see r.r. 27 and 28. For remarks on employment of interpreter, see Ch. V, para. 70.

2. Any objection made by the accused to the interpreter or shorthand writer will be dealt with in the same way as an objection to a member of the court. The court should, if the accused requests it, allow him to give evidence himself or to call witnesses in support of the objection. Any objection which appears to the court to have any foundation should, as a rule, be allowed.

General Provisions as to Witnesses and Evidence.

73. (A) A court-martial shall not receive evidence for the prosecution, which is not relevant¹ to the facts stated in the statement of particulars in the charge, or any evidence which is not admissible either according to the rules of civil courts in England, or under the Army Act², or under any other Act of the Parliament of the United Kingdom.

Evidence to be relevant and according to rules in English courts.

(B) The rules of evidence adopted in civil courts in England, including those contained in the Criminal Evidence Act, 1898, will be followed by courts-martial³, and objections to any question to a witness or to the admission of any evidence may be made accordingly, and a person will not be required to answer any question or produce any document which he could not be required to answer or produce in a like proceeding before a civil court in England.

(C) By "civil court" in this rule is meant a court of ordinary criminal jurisdiction in England, including a court of summary jurisdiction.

1. With respect to the relevancy of evidence, see the note on r. 60 (B) and as to relevancy and inadmissibility of evidence generally, see Ch. VI, paras. 15-81.

2. See A.A. 163-165.

3. A.A. 128 directs courts-martial to follow the rules of evidence which are followed in civil courts in England. Moreover, A.A. 127 expressly lays down that courts-martial are not to be subject in any respect to any Indian, colonial, or foreign statute law or ordinance.

The Criminal Evidence Act 1898 enables the accused and his wife to give evidence like other witnesses, subject to certain conditions, as to which see r. 80 and note. Subject to the provisions of that rule the rules of evidence applicable to other witnesses will equally apply to the evidence of the accused.

74. The court may take judicial notice¹ of all matters of notoriety, including all matters within their general military knowledge.

Judicial notice.

1. As to meaning of "judicial notice" see Ch. VI, paras. 10, 11.

75. The prosecutor is not bound to call all the witnesses whose evidence is in the summary of evidence, or in the abstract of evidence given to the accused¹, but he should ordinarily call such of them as the accused desires to be called, in order that the accused may, if he thinks fit, cross-examine them, and the prosecutor should for this reason, so far as seems to the court practicable, secure the attendance of all such witnesses².

Calling of all prosecutor's witnesses.

1. The object of this rule is to enable the prosecution to proceed, although some witness is not available, and the rule is not intended to absolve the prosecutor from the responsibility of proving his case, or of calling all the available witnesses who can give material evidence (see note to r. 60), and, as a rule, the whole case as it appears in the summary of evidence should be proved by the prosecutor. If the case fails from the prosecutor not calling any available witness, or not asking any necessary questions of a witness, he becomes personally responsible to the convening officer.

2. As the cross-examination of a witness for the prosecution may be most material for the purposes of the defence, a prosecutor should always have all his witnesses present. Failure to produce a material witness for cross-examination might invalidate the proceedings. Any witness whose evidence is in the summary or abstract of evidence, and whom the accused asks to have called, should be called by the prosecution.

76. If the prosecutor intends to call a witness whose evidence is not contained in any summary or abstract given to the accused¹, notice of the intention shall be given to the accused a reasonable time before the witness is called; and if the witness is called without such notice having been given, the court shall, if the accused so desire it, either adjourn after taking the evidence of

Calling of witness whose evidence is not contained in summary or abstract.

the witness, or allow the cross-examination of the witness to be postponed, and the court shall inform the accused of his right to demand such an adjournment or postponement².

1. Where no summary or abstract has been delivered (as *e.g.*, on suspension, under r. 104 of r. 5) this rule will apply to every witness.

2. The court are, under r. 86 (D), justified in calling of their own motion a witness not produced by the parties, if they consider it necessary for the ends of justice, but this power should be sparingly exercised.

List of
witnesses
of accused.

77. The accused shall not be required to give to the prosecutor a list of the witnesses whom he intends to call, but it shall rest with the accused alone to secure the attendance of any witness whose evidence is not contained in the summary or abstract, and for whose attendance the accused has not requested steps to be taken as provided for by Rule 14 (A).¹

1. The prosecutor may be called as a witness for the defence. The judge-advocate, though not competent as a witness for the prosecution, may be called for the defence. A member of a court-martial is a competent witness for the defence, but not for the prosecution (Army Act, 50 (8)); and may be sworn at any stage of the proceedings; but it is desirable to avoid placing officers on courts-martial whose evidence is likely to be required. It need scarcely be observed that a member, if called on to give evidence, must be sworn like other witnesses in open court, and be subject to cross-examination, and that he does not cease in any respect to be a member of the court.

Procuring
attendance
of wit-
nesses.

78. (A) The convening officer, or, after the assembly of the court the president, shall take the proper steps to procure the attendance of the witnesses whom the prosecutor or accused desires to call, and whose attendance can reasonably be procured¹, but the person requiring the attendance of a witness may be required to undertake to defray the cost² (if any) of his attendance.³

(B) Any such witness who is not subject to military law may be summoned to attend by order under the hand of the convening officer, the president of the court, the judge-advocate, or the commanding officer of the accused.⁴

(C) Any such witness who is subject to military law shall be ordered to attend by the proper military authority.⁵

1. The words, "whose attendance, &c.," prevent an accused person from having any technical ground of complaint in case a distant witness whom he requires is not procured; but it is the duty of the officer (whether the convening officer or the president) to secure the attendance of every witness whom there is any ground to suppose to be material for the defence, and the court should adjourn, if necessary, for the purpose; see r. 79.

2. This power is given in order to prevent accused persons or prosecutors demanding unreasonably the attendance of witnesses. In the case of the prosecutor, the cost would usually be defrayed as part of the expenses of the prosecution. In the case of the accused, this provision should not be allowed to interfere with the calling of a witness who appears to be material. The absence of a material witness may be held afterwards to invalidate the proceedings of the court-martial, even though, if the witness had been called, the court would probably have arrived at the same decision, inasmuch as it is impossible to tell what effect the evidence of such a witness might have had on the court.

See generally as to expenses of witnesses, the Army Allowance Regulations. 3. If a witness has in his possession, or under his control, any books, accounts, letters, returns, papers, or other documents which are thought necessary for the trial, care must be taken, in summoning him, to require him to bring them with him; as he would be justified in declining to acknowledge a mere verbal request.

As to the mode of applying for the attendance of military witnesses from distant stations, see K.R., 571.

If a civil witness who has been duly summoned, and whose expenses have been tendered, does not attend, the court should take evidence on oath

as to the service of the summons and the tender of expenses. The President should then forward a certificate through the convening officer to the Army Council reciting the facts, and attaching a certified extract from the proceedings.

4. A witness summoned or ordered to attend before a court-martial has the same privilege from arrest as a witness before one of the superior civil courts. See A.A. 125 (2) and note. If a witness not subject to military law makes default in obeying a summons after payment or tender, of his expenses, he can be punished by a civil court; A.A. 126, 180 (1). Any such witness, if abroad, cannot be compelled to attend a court-martial in the United Kingdom.

For Form of Summons, see pp. 699, 700.

5. Disobedience to any such order is punishable under A.A. 28 (1).

There is no rule of law which exempts the governor or the general commanding in a colony from giving evidence; but regard must be had to the dignity of his office, and it is clear that he would be justified in declining to answer questions respecting confidential official correspondence, and like matters, on grounds of public policy. (See Ch. VI, paras. 95-98.)

79. If such proper steps as mentioned in the preceding rule have not been taken as to any witness, or if any witness whose attendance could not be reasonably procured before the assembly of the court is essential to the prosecution or defence, the court shall adjourn and report the circumstances to the convening officer.

Adjournment of court for non-attendance of witnesses.

80.—(1) Subject to the provisions of Rule 40,¹ an accused person may at any stage of any proceedings at which under these rules evidence for the defence may be given, apply to give evidence as a witness for the defence himself, or to have his wife called as a witness for the defence, but neither the accused nor his wife shall be called as a witness, except on the application of the accused.²

Evidence of the accused and his wife.

(2) The accused giving evidence shall, unless otherwise ordered by the Court, give his evidence from the witness box or other place from which the other witnesses give their evidence.³

(3) An accused person giving evidence may be asked any question in cross-examination,⁴ notwithstanding that it would tend to criminate him as to the offence charged, but shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless—

- (A) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged⁵; or
- (B) he has personally or by his counsel or officer acting as counsel asked questions of the witnesses for the prosecution with a view to establish his own good character or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor, or the witnesses for the prosecution⁶; or
- (C) he has given evidence against any other person charged with the same offence.

(4) The wife of an accused person shall not be compelled to disclose any communication made to her by her husband during the marriage.

1. The provisions of r. 40 referred to are those relating to the time at which the accused is to give his evidence if he is the only witness to facts called by the defence.

2. The rule that the wife of an accused person may not be called except as a witness for the defence, and on the application of the accused, is subject to two exceptions: (1) where the offence is an offence under an enactment mentioned in the schedule to the Criminal Evidence Act, 1898; (2) where the wife of an accused person may be called as a witness by common law. (As to these exceptions, see Ch. VI, para. 86.)

3. If the accused is violent, it may be impossible for the court to allow him to give his evidence from the place from which other witnesses give their evidence; but, except in such cases, the accused should always while he is giving evidence be treated like any other witness, but he will remain under escort while giving evidence.

4. If the accused refuses to answer a question put to him in cross-examination, and the question is one which another witness would be required to answer, and is not a question which an accused person is under this rule specially exempted from answering, he may be charged, like any other witness, with an offence under A.A. 28 (4).

5. See Ch. VI, para. 93A.

6. It will be for the court to decide whether or not the accused has done anything to render himself liable to be cross-examined as to character under this provision. If there is any doubt on the point, their decision should be in favour of the accused. If an accused person is conducting his case in such a manner as to render himself liable to be cross-examined as to character, the court should warn him of the consequences. See Ch. VI, para. 93A.

If the accused has given evidence against another person charged with the same offence, that other person may cross-examine him as to character.

It must, however, be remembered that in no case may a question be put to an accused person which would be inadmissible in the case of another witness; see r. 92 (B).

Withdrawal
of witnesses
from court.

81. During the trial a witness other than the prosecutor or accused ought not, except by special leave of the court, to be in court while not under examination, and if while he is under examination a discussion arises as to the allowance of a question, or the sufficiency of his answers, or otherwise as to his evidence, he may be directed to withdraw.¹

1. As the trial begins with the arraignment of the accused, any witnesses in court should be ordered to withdraw before he is arraigned. If any such discussion as is mentioned in the rule arises, the court should generally order the witness to withdraw, as the discussion might influence his answer. But the accused, whether he intends to give evidence himself or not, must always be present, except when the court is closed for the discussion of any question arising in the course of the trial, or for the deliberation on the finding or sentence of the court (see r. 63). As to an accused person giving evidence after hearing the evidence of the other witnesses for the defence, see note to r. 41 (B).

Swearing of
witnesses.

82. (A) Every witness, before he gives his evidence, shall be sworn by the judge-advocate, or by the president, or by a member of the court.¹

(B) The form of oath for a witness shall be as follows:—

“The evidence which you shall give before this court shall be the truth, the whole truth, and nothing but the truth.

So help you GOD.”

(c) Rule 30 shall apply to every witness.

(d) Where a witness is permitted to make a solemn declaration instead of being sworn,² the declaration may be made before a person authorised to administer the oath, and the form of declaration shall be as follows:—

“I, _____, do solemnly promise and declare that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.”

1. See A.A., 52 (3). As to mode of administration of the oath, see r. 30 and note. As to swearing the prosecutor as a witness, see note

on r. 46 (B). As to power of dealing with recalcitrant witnesses, see A.A. 28 (in the case of persons subject to military law) and 126 (in other cases).

2. A solemn declaration is allowed to be made in the circumstances mentioned in A.A. 52 (4).

83. (A) Every question may be put to a witness orally by the prosecutor, accused, or judge-advocate, without the intervention of the court,¹ and the witness will forthwith reply, unless an objection is made by the court, judge-advocate, prosecutor, or accused, in which case he will not reply until the objection is disposed of. Mode of questioning witnesses.

(B) The evidence of a witness as taken down should be read to him² after he has given all his evidence and before he leaves the court, and such evidence may be explained or corrected by the witness at his instance. If he makes any explanation or correction, the prosecutor and accused may respectively examine him respecting the same.

(C) In the case of a general court-martial at which a shorthand writer is employed, it shall not be necessary to comply with rule 83 (B), if in the opinion of the court and the judge-advocate (such opinion to be recorded in the proceedings) it is inexpedient to do so, but nevertheless, if any witness so desires, rule 83 (B) shall be complied with.

1. As under this rule every question may be put to a witness without being previously written down and submitted for the approval of the president or the court, the court and the judge-advocate, as well as the prosecutor, will have to attend to questions put, so as to object, if necessary, to the question, before the witness replies to it.

2. When the evidence of a witness has been read to him, he should be asked whether it is correct. Any material alteration or explanation should be inserted at the end, and not by way of interlineation or erasure. See Form of Proceedings, paras. (6) and (7), pp. 687, 688.

84. (A) A witness may be examined by the person calling him, and may be cross-examined by the opposite party to the proceeding, and on the conclusion of the cross-examination may be re-examined by the person calling him on matters raised by the cross-examination.¹ Examination and cross-examination.

(B) The court may, if they think fit, allow the cross-examination of a witness to be postponed.²

1. See Form of Proceedings, paras. (5) (6) (7) (8) pp. 684-690, and Ch. VI, paras. 104-119.

2. The court should, if the accused requests it, allow the cross-examination of a witness to be postponed, unless the request appears to be made for the purpose only of obstruction.

85. (A) At any time before the time for the second address¹ of the accused, the judge-advocate, and any member of the court, may, with the permission of the court, address through the president any question to a witness.² Questions to witness by members of court or judge-advocate.

(B) Upon any such question being answered, the president shall also put to the witness any question relative to that answer which he may be requested to put by the prosecutor or the accused, and which the court deem reasonable.³

1. See r. 41 (C).

2. *I.e.* any question which might have been put to the witness when first called. Any question put by a member of the court or judge-advocate will ordinarily be more conveniently put after the examination of the witness by the prosecutor and the accused is concluded, but before any other witness is called.

3. The court should always, under the power given by this rule, ask a witness any question which they are requested by the prosecutor or the accused to ask, and which does not seem unreasonable.

Re-calling
of wit-
nesses,
and calling
of witnesses
in reply.

86. (A) At the request of the prosecutor or accused person a witness may, by leave of the court, be re-called at any time before the time for the second address¹ of the accused for the purpose of having any question put to him through the president.²

(B) A witness may, in special cases, be allowed by the court to be called or re-called by the prosecutor before the time for the second address of the accused, for the purpose of rebutting any material statement made by a witness for the defence³ upon his examination by the accused on any new matter which the prosecutor could not reasonably have foreseen.

(C) Where the accused has called witnesses as to character, the prosecutor before the time for the second address of the accused may call or re-call witnesses for the purpose of proving a previous conviction or entries in the conduct book against the accused.

(D) The court may call or re-call any witness at any time before the finding, if they consider that it is necessary for the ends of justice.⁴

1. See r. 41 (c).

2. The president should also put to the witness any question relevant to the answer given which, if the witness was re-called at the request of the prosecutor, the accused, or if he was re-called at the request of the accused, the prosecutor, requests him to put.

As to the meaning of "any question," see note 2 to r. 85.

If an accused person has given evidence, the court may recall him without any application from the accused.

3. This will include the accused himself when he has given evidence.

4. The power of calling a new witness should only be exercised by the court in cases of unforeseen witnesses becoming available, or of some exceptional circumstances, and should not be exercised to supplement any negligent conduct on the part of the prosecution. If a new witness is called, the court should ordinarily allow him to be cross-examined by the other parties. If a witness is re-called, the questions asked should be limited to one or two questions relating to the evidence previously given by that witness.

It is very desirable that no witness should be called or re-called after the second address of the accused. Otherwise some irregularity is introduced into the proceedings, because if new matter is introduced by such witness it is necessary for the court, if so requested, to allow the prosecutor and the accused respectively to call witnesses in reply, and the accused to address the court with respect to such evidence, and the judge-advocate to supplement his summing up by a reference to such evidence. This remark, however, will not apply where the questions put to a witness re-called are limited as before suggested.

Friend of Accused and Counsel.

Accused
may have a
person to
assist him
on trial.

87. (A) An accused person may have a person to assist him during the trial, whether a legal adviser or any other person.¹

(B) A person so assisting him may advise him on all points, and suggest the questions to be put to witnesses; and, if an officer subject to military law, shall have the same rights and duties as counsel have under these rules, and the right of the accused shall be limited in like manner.²

1. No person other than an officer subject to military law can, unless as counsel (as defined in r. 93 (B)), under any circumstances, either examine witnesses orally or address the court, though he may be present in court and aid the accused.

2. The court should not allow the accused to address them in addition to his counsel, or officer acting as counsel, except as a witness or as prescribed by r. 94 (A).

The accused will, of course, be allowed every facility for communicating with his friend, whether a military man or counsel or not.

88. (A) Subject to these rules, counsel¹ shall be allowed to appear on behalf of the prosecutor and accused at general and district courts-martial :

Counsel allowed in certain courts-martial.

- (1) When held in the United Kingdom ; and
- (2) When held elsewhere than in the United Kingdom or India, if the Army Council or the convening officer, and when held in India, if the Commander-in-chief of the forces in India, or the convening officer, declares that it is expedient to allow the appearance of counsel thereat, and such a declaration may be made as regards all general and district courts-martial held in any particular place, or as regards any particular general or district court-martial, and may be made subject to such reservation as to cases on active service, or otherwise, as seems expedient.

(B) Save as provided in Rule 87, the rules with respect to counsel will apply only to the courts-martial at which counsel are, under this rule, allowed to appear.

1. No one can appear as counsel unless he is a barrister or solicitor or otherwise qualified as provided by r. 93. There is no restriction on the number of counsel.

A person acting as a counsel, though not bound to such strict impartiality as the prosecutor, must still recollect that he is assisting in the administration of justice, and must not be guilty of any unfairness or want of candour. In his address, however, he will have the same liberty as the accused; see r. 60 (O); but he must be even more guarded in referring to the conduct of persons not before the court.

89. (A) Where an accused person gives notice of his intention to have counsel to assist him during the trial, either on the day on which he is informed of the charge or at any time not being less than seven days before the trial, or such shorter time before the trial as in the opinion of the court would have enabled the prosecutor to obtain, if he had thought fit, counsel to assist him during the trial, and would have enabled the authority appointing a judge-advocate to appoint counsel to act as judge-advocate at the trial, or where such notice as mentioned in (B) is given to the accused on the part of the prosecution, counsel may appear at the court-martial to assist the accused.

Requirements for appearance of counsel.

(B) If the convening officer so directs, counsel may appear on behalf of the prosecutor, but in that case, unless the notice in (A) has been given by the accused, notice of the direction for counsel to appear shall be given to the accused at such time (not in any case less than seven days) before the trial, as would, in the opinion of the court, have enabled the accused to obtain counsel to assist him at the trial.

(C) The counsel who appears before a court-martial on behalf of the prosecutor or accused, shall have the same right as the prosecutor or accused for whom he appears, to call, and orally examine, cross-examine, and re-examine witnesses, to make an objection or statement, to address the court, to put in any plea, and to inspect the proceedings, and shall have the right otherwise to act in the course of the trial in the place of the person on whose behalf he appears, and he shall comply with these rules as if he were that person; and in such a case that person shall not have the right himself to do any of the above matters except as regards the statement allowed by Rule 94 or except so far as the court permit him so to do.

(D) When counsel appears on behalf of the prosecutor, the prosecutor, if called as a witness, may be examined and re-examined as any other witness, and Rule 39 (c) and (d) shall not apply.

Counsel for
prosecu-
tion.

90. (A) The counsel for the prosecution should always make an opening address, and should state therein the substance of the charge against the accused, and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into unnecessary detail.

(B) The counsel appearing on behalf of the prosecutor shall have the same duty as the prosecutor, and is subject to be stopped and restrained by the court in the manner provided by Rule 60 (B).

Counsel for
accused.

91. (A) The counsel appearing on behalf of the accused has the like rights and is under the like obligations as are specified in Rule 60 (c) in the case of the accused.

(B) If the court ask the counsel for the accused a question as to any witness or matter, he may decline to answer, but he must not give to the court any answer or information which is misleading.

General
rules as to
counsel.

92. (A) Counsel, whether for the prosecution or for the accused, will conform strictly to these rules and to the rules of civil courts in England relating to the examination, cross-examination, and re-examination of witnesses, and relating to the duties of counsel.

(B) If counsel puts to a witness a question as to a matter which is not relevant except so far as it affects the credit of the witness by injuring his character, and the witness objects to answering the question, the court shall consider whether the witness should be compelled to answer it¹; and

(1) If they are of opinion that the imputation conveyed by the question would, if true, seriously affect their opinion as to the credibility of the witness, the court should require the witness to answer the question; but

(2) If they are of opinion that the imputation, if true, would not affect, or would not seriously affect the opinion of the court as to the credibility of the witness, the court should disallow the question.

If the question is disallowed, counsel on both sides will refrain from further examining or commenting on the matter.

(c) Counsel will not state as a fact any matter which is not proved, or which he does not intend to prove in evidence.

(d) Counsel will not state what is his own opinion as to any matter of fact before the court.

(E) Counsel will not, in a question to any witness, assume that facts have been given in evidence which have not been given in evidence, or that particular answers have been given contrary to the fact.

(F) Counsel will treat the court and judge-advocate with due respect, and shall, while regarding the exigencies of his case, bear in mind the requirements of military discipline in the respectful treatment of any superior officer of the accused who may attend as a witness.

1. If the question is put to the accused, the court will also have to consider whether, having regard to r. 80, he should be compelled to answer it.

93. (A) Neither the prosecutor nor the accused has any right to object to counsel, if properly qualified. Qualification of counsel.

(B) Counsel shall be deemed properly qualified—

- (1) If in England or Ireland he is a barrister-at law or solicitor.
- (2) If in Scotland he is an advocate or law agent.
- (3) If in India he is a barrister-at-law or is a legal practitioner authorised to practise, with right of audience, in a court of sessions.
- (4) If in any other part of His Majesty's dominions he is recognised by the convening officer as having in that part rights and duties similar to those of a barrister-at-law in England and as being subject to punishment or disability for a breach of professional rules.

94. (A) If an accused person assisted by counsel, or by an officer subject to military law, does not wish to give evidence on his own behalf, he may, if he thinks fit, at the close of the case for the prosecution and before the address by such counsel or officer, make a statement giving his account of the subject of the charges against him. The statement may be made either orally or in writing, but the accused making the statement shall not be sworn, and no question can be put to him by the court or by any other person¹. Statement by accused defended by counsel or officer.

(B) If the accused makes such a statement, the procedure will, so far as possible, be the same as if the accused had called witnesses to the facts of the case other than himself.²

1. An accused person defended by counsel or by an officer acting as counsel has the option of either giving evidence himself or making a statement. He cannot be compelled either to give evidence or to make a statement, and he cannot be allowed to do both.

The statement of the accused differs from his evidence when he is defended by counsel in that the statement—

- (1) is not on oath;
- (2) may be in writing;
- (3) is delivered as a consecutive statement and not as a series of answers to questions;
- (4) is not subject to the rules of evidence;
- (5) does not subject the accused to cross-examination;
- (6) will be delivered by the accused from the place where he is ordered to take up his position, and not from the place from which witnesses give evidence.

As to the weight to be allowed to a statement of the accused, see note 1 to r. 43.

2. The result of this is that, if the accused makes a statement, the prosecutor will be entitled to call witnesses in reply and to reply to the address of counsel or the officer acting as counsel for the accused. (See r. 41 and Form of Proceedings para. (8), p. 691.) But if the accused elects to give evidence instead of making a statement, and he is the only witness to the facts of the case called by the defence, the procedure will be in accordance with r. 40, not with r. 41.

Proceedings.

95. (A) At a court-martial the judge-advocate, or, if there is none, the president, shall record or cause to be recorded all transactions of that court¹, and shall be responsible for the accuracy of the record (in these rules referred to as the proceedings); and if the judge-advocate is called as a witness by the accused, the president will be responsible for the accuracy of the record in the proceedings of the evidence of the judge-advocate. Record in proceedings of court martial.

(M.L.)

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(B) The evidence shall be taken down in a narrative form³ in as nearly as possible the words used; but in any case where the prosecutor, the accused person, the judge-advocate, or the court considers it material, the question and answer shall be taken down *verbatim*³.

(c) Any question which has been objected to, and the tender of any evidence which has been objected to, shall, if the prosecutor or accused so requests, or the court think fit, be entered with the grounds of the objection, and the decision of the court thereon.

(D) Where any address by or on behalf of the prosecutor or person under accusation, or the summing up of the judge-advocate, is not in writing, it shall not be necessary to record the address or summing up in the proceedings further or otherwise than the court think proper, or in the case of the summing up than the judge-advocate requires, except that—

- (1) The court shall in every case make such record of the defence made by the accused as will enable the confirming officer to judge of the reply made by or on behalf of the accused to each charge against him; and
- (2) The court should also record any particular matters in the address by or on behalf of the prosecutor or accused person, which the prosecutor or accused person, as the case may be, requires.

(E) The court shall not enter in the proceedings any comment, or anything not before the court, or any report of any fact not forming part of the trial; but if any such comment or report seems to the court necessary, the court may forward it to the proper military authority in a separate document, signed by the president⁴.

1. The record must be taken in a clear and legible hand, without erasures. Interlineations or corrections must be avoided as much as possible; when made they should be verified by the president's initials. The pages should be numbered and the sheets fastened together, and sufficient space must be left below the signature of the president for the remarks of the confirming authority. The station must be added, together with the date. See also Memoranda for Guidance of Courts-Martial, p. 706.

2. i.e., the material effect of a question and answer is to be written down as the evidence given by the witness, without distinguishing the question and answer. Thus, suppose the question to be "What did the accused do then?" and the answer to be "He left the room," the evidence taken down would be "Accused then left the room." Often, especially in cross-examination the question is irrelevant, or is made irrelevant by the answer; in such cases it will be unnecessary to take anything down.

If the evidence is not given in English, the interpretation into English as given to the court will be taken down, except that where a question or answer is required to be taken down in the proceedings *verbatim*, and is not in English, it must be taken down, as nearly as may be, in the English character, and the interpretation of it into English added.

3. The obligation to take down important passages *verbatim* applies to the cross-examination of a witness as well as to his examination-in-chief.

4. The court can make in a separate document any remark they think proper on the conduct of any person who appeared before them, or on the manner in which a particular witness has given his evidence, or on the manner in which the prosecution has been conducted; also, if they think the evidence shows that the accused has committed some offence not charged, e.g., if he is charged with desertion in August, and the evidence shows that he deserted in June, they must acquit him, but may report separately the offence of June.

The court can scarcely be too guarded in expressing censure on individuals not before them for trial; indeed, cases justifying such expression will be rare and exceptional.

It will usually be desirable to make a note at the time of any matter upon which the court intend to make any such comment or report, although it will not be correct to enter such matter in the proceedings.

96. The proceedings shall be deemed to be in the custody of the judge-advocate (if any), or if there is none, of the president, but may, with proper precautions for their safety, be inspected by the members of the court, the prosecutor, and accused respectively, at all reasonable times before the court is closed to consider the finding.

97. (A) Where the court is a general court-martial the proceedings shall be at once sent by the person having the custody thereof, to such person as may be from time to time directed by His Majesty, and subject to the provisions of any such direction of His Majesty, as may be directed by the order convening the court².

Custody and inspection of proceedings after finding.

(B) Where the court is a district court-martial, the proceedings shall be at once sent by the person having the custody thereof, to such person as may be directed by the order convening the court, or in default of any such direction to the confirming officer.

(C) Where the court is a regimental court-martial, the proceedings shall be at once sent by the president to the confirming officer.

1. i.e. (see r. 96), if it is a general court-martial, or a district court-martial with a judge-advocate, the judge-advocate, and in any other case, the president of the court.

2. The proceedings of general courts-martial will be sent, if held in the United Kingdom, to the Judge-Advocate-General in London; if held elsewhere than in the United Kingdom to the General or other officer having power to confirm the findings and sentences of general courts-martial. K.R., 592.

Where the court-martial is on a marine, the proceedings will be sent to the Admiralty and preserved there.

The provisions of this rule should, so far as possible, be followed in the case of field general courts-martial as well as general courts-martial.

If from any cause a member of the court-martial has become confirming officer, he cannot (except in the case of a field general court-martial) confirm the finding and sentence of the court, but must transmit the proceedings for confirmation to a superior officer who is competent to confirm the findings and sentences of the like description of court-martial (A.A. 54 (4)). This officer would ordinarily be as follows:—In the United Kingdom, if it is a regimental court-martial, the brigadier-general; if it is a district court-martial, the general officer commanding-in-chief the command. In India, if it is a general court-martial, the Commander-in-Chief; if it is a district court-martial, the next superior officer having authority to confirm the findings and sentences of general courts-martial, or, if there is none superior, the Commander-in-Chief; and if it is a regimental court-martial, the next superior officer having authority to convene a general or a district court-martial. Elsewhere than in India or the United Kingdom, the next superior officer who is competent to confirm; or if in a colony where there is no such officer, then the governor of the colony.

Any confirming officer has power to withhold his confirmation either wholly or partly, and refer the finding and sentence, so far as he withholds his confirmation, to a superior authority competent to confirm the finding and sentences of the like description of courts-martial (A.A. 54 (5)). The reference should be made to one of the officers mentioned above in this note.

The original proceedings, and not a copy, must be signed, and sent to the confirming officer. If the proceedings are recorded and signed in duplicate, one must be treated as a certified copy of the other, and not as the original.

The proceedings should be dated and signed, in the case of an acquittal, immediately after the finding (see r. 45); and, in the case of a conviction, after the sentence (see r. 50).

98. (A) The proceedings of a court-martial (other than a regimental court-martial) shall, after promulgation, be forwarded, as circumstances require, to the office of the Judge-Advocate-General in London or India, or to the Admiralty, and there preserved for not less, in the case of a general court-martial, than seven years, and in the case of any other court-martial, than three years.

Preservation of proceedings.

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(b) The proceedings of a regimental court-martial, when promulgated, shall be preserved for not less than three years, with the regimental records of the corps to which the accused belonged in manner from time to time directed by His Majesty's Regulations.

See note to the next rule, and K.R., 595, 1928.

Rate of payment for copies of proceedings.

99. The rate at which copies of the proceedings of a court-martial shall be supplied shall be the actual cost of the copy required, not exceeding twopence for every folio of seventy-two words; and the officer or person having the custody of those proceedings must, on demand made within the time limited for the preservation of the proceedings, supply a copy accordingly to any person tried by the court-martial¹.

1. This "prescribes" the rate of payment for the purposes of A.A. 124; see note on that section.

Time limited.—See r. 98.

Loss of proceedings.

100. (A) If the original proceedings¹ of a court-martial, or any part thereof, are lost, a copy thereof, if any, certified by the president of or the judge-advocate at the court-martial, may be accepted in lieu of the original.

(B) If there is no such copy, and sufficient evidence² of the charge, finding, sentence, and transactions of the court can be procured, that evidence may, with the assent of the accused, be accepted in lieu of the original proceedings, or part thereof lost.

(c) In any case above in this rule mentioned, the finding and sentence, if requiring confirmation, may be confirmed, and shall be as valid as if the original proceedings, or part thereof, had not been lost.

(d) If, in a case where confirmation of a finding or finding and sentence is required, the proceedings, or part thereof, were lost before confirmation, and there is no such copy or evidence, or the accused refuses such assent, as above mentioned, the accused may be tried again, and on the issue of an order convening the court for the trial, the finding and sentence of the previous court, of which the proceedings were so lost, shall be null.

1. See note to r. 97; and as to the impropriety of annexing documents to the proceedings, K.R., 581.

2. This may be obtained by the president, or some member of the court, writing out from memory the substance of the charge, finding, and sentence, and a summary of the transactions of the court, which should be authenticated by the signature of the members. A copy of the charge, however, should always be procured, if practicable.

Judge-Advocate.

Appointment of judge-advocate and disqualification.

101. (A) Where the convening officer is authorised¹ to appoint a judge-advocate, he shall, in the case of a general, and may, in the case of a district, court-martial, by order appoint a fit person to act as judge-advocate at the court-martial.

(B) An officer who is disqualified² for sitting on a court-martial shall be disqualified for acting as judge-advocate at the court-martial.

(c) A court-martial shall not be invalid by reason of any invalidity in the appointment of the judge-advocate officiating thereat, in whatever manner appointed, if a fit person³ has been appointed; but this rule shall not relieve from responsibility the person who made the invalid appointment⁴.

1. i.e., by the warrant authorising him to convene a court-martial.

In the case of a general court-martial in the United Kingdom, the warrant to the convening officer does not give him power to appoint a judge-advocate. Application must be made to the Judge Advocate-General for the necessary authority.

2. See r.r. 19 (B) and 22 (B) and notes thereon. A civilian who is under the same disqualification as is mentioned in r. 19 (B) ought not to serve as judge-advocate, though not in terms disqualified by this rule; indeed, by A.A. 50 (3), a prosecutor or any witness for the prosecution, whether an officer or not, is disqualified for acting as judge-advocate.

3. A judge-advocate should of course be free from all suspicion of bias or prejudice; and should possess some acquaintance with military law and the rules of evidence.

4. The object of this paragraph is merely to prevent a miscarriage of justice in consequence of any invalidity in the appointment of a judge-advocate; not to enable an officer, who is not authorised to appoint a judge-advocate, to appoint one. An officer who, without due authority, attempts to appoint a judge-advocate, will justly incur censure.

102. If the judge-advocate dies, or from illness, or from any cause whatever is unable to attend, the court shall adjourn, and the president shall report the circumstance to the convening authority; and a person not disqualified to be judge-advocate may be appointed by the proper authority, and he shall be sworn¹, and act as judge-advocate for the residue of the trial, or until the judge-advocate returns.

Substitute on death, illness, or absence of judge-advocate.

1. See r.r. 27, 28; Form of Proceedings, para. (5), p. 685.

103. The powers and duties of a judge-advocate are as follows:—

Powers and duties of judge-advocate.

- (A) The prosecutor and the accused respectively, are at all times, after the judge-advocate is named to act on the court, entitled to his opinion on any question of law relative to the charge or trial, whether he is in or out of court, subject, when he is in court, to the permission of the court;
- (B) At a court-martial he represents the Judge-Advocate-General;
- (C) He is responsible for informing the court of any informality or irregularity in the proceedings. Whether consulted or not, he will inform the convening officer and the court of any informality or defect in the charge, or in the constitution of the court, and will give his advice on any matter before the court.
- (D) Any information or advice given to the court on any matter before the court will, if he or the court desire it, be entered in the proceedings.
- (E) At the conclusion of the case he will, unless both he and the court consider it unnecessary, sum up the evidence and give his opinion upon the legal bearing of the case before the court proceed to deliberate upon their finding.
- (F) Upon any point of law or procedure which arises upon the trial which he attends, the court should be guided by his opinion, and not overrule it, except for very weighty reasons. The court are responsible for the legality of their decisions, but they must consider the grave consequences which may result from their disregard of the advice of the judge-advocate on any legal point. The court, in following the opinion of the judge-advocate on a legal point, may record that they have decided in consequence of that opinion¹.
- (G) The judge-advocate has, equally with the president², the duty of taking care that the accused does not suffer any

disadvantage in consequence of his position as such, or of his ignorance or incapacity to examine or cross-examine witnesses or to make his own evidence clear or intelligible, or otherwise, and may, for that purpose, with the permission of the court³, call witnesses and put questions to witnesses, which appear to him necessary or desirable to elicit the truth.

(H) In fulfilling his duties the judge-advocate will be careful to maintain an entirely impartial position.

1. With reference to this paragraph, it is to be observed that the members of the court may become responsible to the ordinary civil courts of law in the event of the accused being unjustly convicted: see Ch. VIII. This liability may turn on the question whether they exercised a *bond fide* judgment; and though they are not bound by the opinion of the judge-advocate, yet disregard of his advice, if that advice is right, might be held to show that they did not exercise a *bond fide* judgment. On the other hand, the adoption of the advice of the judge-advocate, even if wrong, may, in a doubtful case, practically exonerate the members from liability.

2. As to the duty of the president towards the accused see r. 59 (B) and note.

3. This should never be refused unless the court consider that the judge-advocate is acting improperly, or in such a manner as to obstruct the proceedings, and they should always record their reasons for refusing the permission.

Exception from Rules.

Suspension of rules on the ground of military exigencies or the necessities of discipline.

104. Where it appears to the officer convening a court-martial, or to the senior officer on the spot, that military exigencies¹, or the necessities of discipline, render it impossible or inexpedient to observe any of the rules 4 (c), (D), and (E), 5, 8, 13, and 14, he may, by order under his hand, make a declaration to that effect specifying the nature of such exigencies or necessities, and thereupon the trial or other proceeding shall be as valid as if the rule mentioned in the declaration had not been contained herein; and the declaration may be made with respect to any or all of the rules above in this rule mentioned in the case of the same court-martial².

Provided that the accused shall have full opportunity of making his defence³, and shall be afforded every facility for preparing it which is practicable, having due regard to the said exigencies or necessities.

1. The nature, and not merely the existence, of military exigencies, or the necessities of discipline, must be stated in the order.

2. The power conferred by this rule should hardly ever be exercised, except when on active service, and then only if absolutely necessary. It may, however, occasionally be necessary to resort to it on the eve of embarkation, or on the line of march, or possibly in an extreme case, where the necessities of discipline require a very speedy trial and punishment.

In exercising the power under the rule, the officer must consider whether it is necessary to dispense with all the rules mentioned. For example, the observance of r. 4 (C), (D), and (E) may be practicable, although that of r. 14 is not so. If r.r. 4 (C), (D), and (E), and 8 are suspended by the order, some means must be taken to inform the accused of the charge, and of the names of the witnesses, and of the nature of their evidence, and the court must take care that the accused is not prejudiced by reason of the suspension, as, for instance, by not having received any summary of evidence.

The power of dispensing with r. 13 is only intended to be exercised, in case it is necessary to try a person before he can communicate with any witness or friend at a distance. That rule should never be dispensed with except in extreme cases, and even then the accused must be allowed free communication with any witness or friend on the spot.

R. 14 (O) and (D) must always be complied with, and r. 14 (A) and (B), if not complied with within the time there mentioned, should be complied with as long as possible before the assembly of the court.

3. The accused will not have this opportunity unless he receives in reasonable time the information mentioned above; and if he requests a reasonable adjournment in order to consider the witnesses' evidence, or to acquaint himself with the charge, or requests the postponement of the cross-examination of a witness, the court should grant the request, and may adjourn for the purpose. A refusal might be held to be non-compliance with this proviso, and thus to invalidate the trial. For the same reason the court, even in the absence of any such request, must take care that the accused is not prejudiced by being taken by surprise, either by the charge or the evidence of the witnesses.

Field General Court-Martial.

The foregoing rules shall not, save as hereinafter mentioned, apply to field general courts-martial, which shall be subject to the following rules :—

105. (A) A field general court-martial¹ may be convened—

Convening
of field
general
court-
martial.

- (i) By any officer in command of a detachment or portion of troops in any country beyond the seas when not on active service, where complaint is made to him that an offence has been committed by any person subject to military law under his command against the property or person of any inhabitant of or resident in that country : or
- (ii) By the commanding officer of any corps or portion of a corps on active service, or by any officer in immediate command of a body of forces on active service, where it appears to him, on complaint or otherwise, that a person subject to military law has committed an offence.

(B) An officer in command of a detachment or portion of troops not on active service should not convene a field general court-martial in His Majesty's dominions unless he is authorised so to do by the general officer commanding the forces to which the officer belongs.

(C) An officer, before convening a field general court-martial for the trial of a person, shall be satisfied that it is not practicable² to try the person by an ordinary court-martial, and—where the officer is below the rank of field officer and is not a commanding officer—be further satisfied that it is not practicable³ to delay the trial for reference to a superior officer.

1. See generally as to field general courts-martial A.A. 49 and Ch. V, paras. 25 and 26.

The court should not, as a rule, be convened for the trial of an offence not committed on active service, in any place where ordinary civil justice is administered.

Subject to the restrictions imposed by A.A. 49 and by this rule, a field general court-martial can try any offence, and can try an officer.

2. See r. 122 (A).

106. (A) Not less than three officers must be appointed¹.

Composi-
tion of field
general
court-
martial.

(B) If the convening officer is of opinion that three other officers are not available² to form the court, he may appoint himself president of the court; but if he is of opinion that three other officers are available, or that although three other officers are not available he is himself by reason of his position as confirming officer or otherwise not available, he must appoint as president some other officer :—

Provided that the convening officer—

- (i) Must not appoint as president any officer below the rank of field officer, unless he is himself below that rank, or unless in his opinion a field officer is not available; and
- (ii) Where under the foregoing provision he has power to appoint as president an officer below the rank of field officer, must not appoint an officer below the rank of captain, unless in his opinion a captain is not available.

(c) The officers should have held commissions for not less than one year, and if in the opinion of the convening officer any officers are available who have held commissions for not less than three years, he should appoint those officers in preference to officers of less service.

(n) The provost-marshal, an assistant provost-marshal, and an officer who is prosecutor or a witness for the prosecution, must not be appointed a member of the court, but save as aforesaid any available officers may be appointed to sit.

1. (A) This gives the ordinary rule for the constitution of a field general court-martial. In case of military exigencies, two officers only may be appointed, if three are not available. A.A. 49 (1) (b) and r. 107 (A). Speaking generally, the rules which govern the procedure of ordinary courts-martial should be observed as far as practicable.

2. *Available.* See r. 122 (A).

As to field
general
court-
martial
where
military
exigencies
occur.

107. (A) Where the convening officer is satisfied that military exigencies or other circumstances prevent compliance with Rule 106, and that it is not practicable¹ to delay the trial for the purpose of such compliance, then if, in his opinion, three officers are not available¹, two will be appointed.

(B) The court may be convened, and the proceedings of the court recorded in accordance with the form in the Second Appendix to these rules²; but if it appears to the convening officer that military exigencies or other circumstances prevent the use of that form, the court-martial may be convened and the proceedings carried on without any writing, except that such written record as seems practicable¹ must be kept by the provost-marshal or assistant provost-marshal, if present, or if not, by the president and the officer charged with the promulgation, stating as near as may be the particulars set forth in the form, and stating at least the name (or, if the name is not known, the description) of the offender, the offence charged, the finding, sentence, and confirmation, and any recommendation to mercy.

(c) The convening officer will report to superior authority for the information of the officer who, if a field general court-martial had not been convened, would have had power to convene a general court-martial to try the accused, the military exigencies or other circumstances which prevented compliance with Rule 106, or the use of the form in the Second Appendix³.

1. *Practicable—available.* See r. 122 (A).

2. For form, see pp. 700-702.

3. Before resorting to the exceptional courses allowed by this rule, the convening officer must satisfy himself of the military exigencies or other circumstances which justify it.

The accused must always have full opportunity of making his defence; see r. 116.

Charge.

108. The statement of an offence may be made briefly in any language sufficient to describe or disclose an offence under the Army Act.

109. The court may be sworn at the same time to try any number of accused persons then present before it, but, except so far as accused persons are tried together for an offence committed collectively, the trial of each accused person will be separate. Trial of several accused persons.

110. (A) The names of the president and members of the court will be read over in the hearing of the accused persons, and they will be asked if any of them objects to be tried by any of those officers. Challenge.

(B) If any accused person objects to an officer, and any member of the court thinks the objection reasonable, steps will be taken to try the accused before a court composed of officers against whom he has no reasonable objection.

111. (A) The president will administer to the other members of the court, and a member of the court, when sworn, will administer to the president, the following oath¹:— Swearing court.

“You , do swear that you will well and truly try the accused person [or persons] before the court according to the evidence, and that you will duly administer justice according to the Army Act now in force, without partiality, favour, or affection, and you do further swear that you will not divulge the sentence of the court until it is duly confirmed, and you do further swear that you will not, on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you GOD.”

(B) The following oath shall be administered by a member of the court to every interpreter:—

“You do swear that you will to the best of your ability truly interpret and translate, as you shall be required to do, touching the matter before this court-martial. So help you GOD.”

1. See notes to A.A. 52 (1).

112. When the court are sworn, the president will state to the accused then to be tried the offence with which he is charged, with, if necessary, an explanation giving him full information of the act or omission with which he is charged, and will ask the accused whether he is guilty or not of the offence. Arraignment.

113. If a special plea to the general jurisdiction is offered by the accused, and is considered by the court to be proved, the court shall report the same to the convening officer. Plea to jurisdiction.

See r. 34, and note.

114. (A) The witnesses for the prosecution will be called, and the accused will be allowed to cross-examine them, and to call any available witnesses for his defence¹. Witnesses.

(B) The following oath shall be administered by a member of the court to every witness:—

“The evidence which you shall give before this court shall be the truth, the whole truth, and nothing but the truth, So help you GOD.”

(C) The President of the court shall take down, or cause to be taken down, a short summary of the evidence of all the witnesses at the trial, and the summary so taken down shall be attached to the proceedings:

Provided that, if it appears to the convening officer that military exigencies or other circumstances prevent compliance with this provision, the trial may be carried on without any summary being

taken down, but in every such case the convening officer shall report to superior authority in the same manner as he is required to do under the provisions of Rule 107 (c).

1. The accused will be able on his own application to give evidence himself or to call his wife as a witness (see r. 80).

Mode of
swearing
witness, and
solemn de-
claration.

115. (A) A member of the court or a witness may take an oath with such ceremonies and in such manner as makes the oath binding on his conscience, and the words "you" and "So help you GOD" may be varied or omitted for the purpose.

Solemn de-
claration by
witness.

(B) If a member of the court or a witness or an interpreter objects to take an oath, or is objected to as incompetent to take an oath, and the court is satisfied of the sincerity of the objection, or, where the competence of the person to take the oath is objected to, of the oath having no binding effect upon the conscience of the person, the court shall permit the person, in lieu of an oath, to make a solemn declaration, which will be in the same form as the oath, with the substitution of "I" for "you," and with the omission of "You do swear that" and "So help you GOD," and with the substitution or addition, where necessary, of "I do solemnly declare that."

See r. 80, and note, and A.A. 52 (4).

Defence.

116. The accused will be asked what he has to say in his defence, and shall be allowed to make his defence.

Acquittal.

117. (A) In the case of an equality of opinions on the finding the accused will be acquitted.

(B) The finding of acquittal requires no confirmation, and, if it relates to all the offences charged against an accused person, will be declared at the time of the finding, and the accused will thereupon be discharged from custody.

Sentence.

118. (A) The court, if consisting of three or more officers, may award any sentence which a general court-martial can award; but if the court pass sentence of death, the whole court must concur.

(B) The court, if consisting of two officers, may award any sentence authorised for the offence, not exceeding field punishment¹, or two years' imprisonment with hard labour.

(C) Any recommendation to mercy will be attached to the proceedings, and communicated to the accused, together with the finding and sentence.

1. See Field Punishment Rules, pp. 721, 722.

General
provisions
as to votes
and powers
of court.

119. (A) Except as provided by Rules 110 (B), 117, and 118, every question will be determined by the majority of opinions, and in case of equality, the president shall have a second or casting vote.

(B) If, after the commencement of the trial, the court consider that any accused person named in the schedule to the order convening the court should be tried by an ordinary court-martial, the court may strike the name of that person out of the schedule.

(C) The proceedings shall be held in open court, in the presence of the accused, except on any deliberation among the members, when the court may be closed.

(D) The court may adjourn from time to time, and may, if necessary, view any place.

Confirma-
tion.

120. (A) Except in the case of acquittal, the finding and sentence of the court shall be valid only in so far as they are confirmed by proper military authority¹.

(b) The provost-marshal or an assistant provost-marshal cannot confirm the finding or sentence of the court³.

(c) A prosecutor of an accused person or a member of the court trying an accused person cannot confirm the finding or sentence of the court as regards that person, except that if a member of the court trying an accused person would otherwise under these rules have power to confirm the sentence, and is of opinion that it is not practicable³ to delay the case for the purpose of referring it to any other officer, he may confirm the finding and sentence.

(d) In any case where a sentence of death, penal servitude, imprisonment, or detention, is passed, the confirming authority shall after confirmation forthwith transmit the proceedings to the officer in chief command of the forces in the field comprising the force with which the accused is present, and a sentence of death or penal servitude shall not be carried into effect pending the decision of that officer on the case :—

Provided that—

- (i) The confirming officer shall not be required to refer any case to the officer in chief command in the field if in confirming the sentence he commutes it so as to make it a punishment less than detention ; and
 - (ii) Where the confirming officer is of opinion that, by reason of the nature of the country the great distance, or the operations of the enemy, it is not practicable³ to delay the case for the purpose of referring it to the officer in chief command in the field, a sentence of death or penal servitude may be carried into effect if confirmed by the general or field officer commanding the force with which the person under sentence is present at the date of the sentence.
- (e) Subject to the preceding provisions of this Rule, the finding and sentence of a field general court-martial as regards any person may be confirmed—
- (i) Where the court was convened by an officer in command of a detachment or portion of any troops not on active service, by an officer authorised to confirm the findings and sentences of general courts-martial for the trial of offences in the force of which the detachment or portion of troops form part ; and
 - (ii) Where the court was convened by an officer in command of any troops on active service, by the senior officer, not being an officer below the rank of field officer, present at the place where the trial takes place, or if there is no officer not below that rank present at that place, by the senior officer not below the rank of field officer present at any other place.
- (f) Any officer may, if he thinks it desirable, reserve any finding or sentence for confirmation by superior authority⁴.
- (g) A confirming authority shall not send back a finding and sentence for revision more than once, nor recommend the increase of a sentence, and on any revision the court shall not take further evidence nor increase the sentence⁵.

1. This is the same provision as is enacted in A.A. 54 (6) for ordinary courts-martial (see note to that section, and Ch. V, para. 5).

2. The general effect of (B)–(E) is this. The ordinary rule for the confirmation of the finding and sentence of a field general court-martial will be (as laid down in (B)) that it is confirmed where troops are not on active service,

by some officer authorised to confirm the findings and sentences of general courts-martial; and where troops are on active service, by the senior officer (if of field rank) on the spot, and if the senior officer is not of that rank, by the nearest available senior officer of that rank.

If the sentence is one of the severity of detention or upwards, it must be referred to the general in chief command in the field; and a sentence of death or penal servitude must not be carried out pending his decision. But if communication with that officer is impracticable, or so difficult as to cause too great delay, a sentence of death or penal servitude may be carried into effect if confirmed by the general or field officer commanding the force with which the accused is present.

(B) and (C) give effect to the ordinary rule that a prosecutor or a member of the court is not to confirm, and the rule is extended to the provost-marshal and his assistant, as if he were the prosecutor.

3. See r. 122 (A).

4. Enables any officer to refer a confirmation to superior authority, or to confirm the finding and refer the sentence.

5. Applies the law enacted for ordinary courts-martial by Army Act, s. 54 (2).

Application of rules.

121. The foregoing rules—54 (Mitigation of sentence on partial confirmation), 56 (Confirmation notwithstanding informality in or excess of punishment), 97 (Transmission of proceedings after finding), 98 (Preservation of proceedings), 99 (Rate of payment for copies of proceedings), and 100 (Loss of proceedings)—shall, so far as practicable, apply as if a field general court-martial were a district court-martial.

Definitions.

122. (A) In the rules with respect to field general courts-martial, unless the context otherwise requires, the expressions “practicable” and “available” mean respectively practicable and available, having due regard to the public service.

(B) The expression “commanding officer of a corps or portion of a corps” means the officer whose duty it is under the provisions of His Majesty’s Regulations, or, in the absence of any such provisions, under the custom of the service, to deal with a charge against any of the persons belonging to the corps or portion of a corps who are present under his command, of having committed an offence, that is, to dispose of the charge on his own authority or to refer it to superior authority.

(B) See note to r. 129.

Evidence of opinion of convening and confirming officer.

123. Any statement in an order convening a field general court-martial as to the opinion of the convening officer, and any statement in the minute confirming the finding or sentence of a field general court-martial as to the opinion of the confirming officer, shall be conclusive evidence of that opinion, but this rule shall not prejudice the proof at any time of any such opinion when not so stated.

PART II.—MISCELLANEOUS.

Regulations for Courts of Inquiry, other than Courts of Inquiry held under Section 72 of the Army Act.

124. (A) A court of inquiry is an assembly of officers directed to collect evidence, and, if so required, to report with regard to any matter which may be referred to them¹. Courts of Inquiry.

(B) A court of inquiry may be assembled by the Army Council or by the officer in command of any body of troops, whether belonging to one or more corps.

(C) The court may be composed of any number of officers of any rank, and of any branch or department of the service, according to the nature of the investigation.

(D) The court will be guided by the written instructions of the authority who assembled the court. The instructions will be full and specific, and will state the general character of the information required. They will also state whether a report is required or not.

(E) Previous notice should be given of the time and place of the meeting of a court of inquiry, and of all adjournments of the court, to all persons concerned in the inquiry.

(F) Whenever any inquiry affects the character or military reputation of an officer or soldier, full opportunity must be afforded to the officer or soldier of being present throughout the inquiry, and of making any statement and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence, in his opinion, affects his character or military reputation, and producing any witnesses in defence of his character or military reputation².

(G) It is the duty of a court of inquiry to put such questions to a witness as they think desirable for testing the truth or accuracy of any evidence he has given, and otherwise for eliciting the truth.

(H) When a court of inquiry is held on recovered prisoners of war, and in any other case in which the authority who assembled the court has so directed, the evidence will be taken on oath, in which case the court will administer the same oath or solemn declaration to witnesses as if the court were a court-martial.

The authority who assembled the court will, when the court is held on a returned prisoner of war, direct the court to record their opinion whether the officer or soldier concerned was taken prisoner by reason of the chances of war, or through neglect or misconduct on his part, and the authority who assembled the court will record his own opinion. In other cases the court will give no opinion on the conduct of any officer or soldier unless so directed by the authority who assembled the court.

(I) The members of the court will not themselves be sworn, but when the court is a court of inquiry on recovered prisoners of war the members will make the following declaration :—

I, A.B. do declare upon my honour that I will duly and impartially inquire into and give my opinion as to the circumstances in which became a prisoner of war, according to the true spirit and meaning of His Majesty's Orders and Regulations on this head; and I do further declare, upon my honour, that I will not on any

account, or at any time, disclose or discover my own vote or opinion, or that of any particular member of the court, unless required to do so by competent authority.

(J) The court may be re-assembled as often as the authority who assembled the court may direct, for the purpose of examining additional witnesses, or further examining any witness, or recording further information.

(K) The whole of the proceedings of a court of inquiry will be forwarded by the president to the authority who assembled the court.

(L) The proceedings of a court of inquiry, or any confession, statement, or answer to a question made or given at a court of inquiry, shall not be admissible in evidence against an officer or soldier, nor shall any evidence respecting the proceedings of the court be given against any officer or soldier, except upon the trial of any officer or soldier under Section 29 of the Army Act, for wilfully giving false evidence before that court.

(M) An officer or soldier who is tried by court-martial in respect of any matter or thing which has been reported on by a court of inquiry, and, unless the Army Council see reason to order otherwise, an officer or soldier whose character or military reputation is, in the opinion of the Army Council, affected by anything in the evidence before, or in the report of, a court of inquiry, shall be entitled to a copy of the proceedings of the court, including any report made by the court, on payment of the actual cost of the copy required, not exceeding twopence for every folio of 72 words.

1. See generally as to courts of inquiry, K.R., 666-678. As to privilege of report of court, see Ch. VIII, para. 78; and as to privilege of witnesses, *ib.*, para. 82.

2. A court of inquiry has no power to compel the attendance of civilian witnesses.

Regulations for Courts of Inquiry under Section 72 of the Army Act, for the purpose of determining the illegal Absence of Soldiers.

Courts of inquiry as to illegal absence under s. 72.

125. (A) A court of inquiry under Section 72 of the Army Act¹, will, when assembled, require the attendance of such witnesses as they think sufficient to prove the absence and other facts specified as matters of inquiry in that section².

(B) They will take down the evidence given them in writing, and at the end of the proceedings will make a declaration³ of the conclusions at which they have arrived in respect of the facts they are assembled to inquire into.

(C) The commanding officer of the absent soldier will enter in the regimental books a record of the declaration of the court, and the original proceedings will be destroyed.

(D) The court of inquiry will examine all witnesses who may be desirous of coming forward on behalf of the absentee, and will put such questions to them as may be desirable for testing the truth or accuracy of any evidence they have given, and otherwise for eliciting the truth, and the court in making their declaration, will give due weight to the evidence of all such witnesses.

(E) A court of inquiry will administer the same oath⁴ or solemn declaration to the witnesses as if the court were a court-martial, but the members of such court will not themselves be sworn.

1. See notes to A.A. 72.

2. See note 2 to r. 124.

The court should not be assembled until the soldier has been absent for a period of 21 clear days—excluding the day on which the absence commenced and that on which the court assembles.

8. The court, in making their declaration on A.F., A.2, will follow the wording shown below. The record of the declaration in Army book, 161 will be an exact reproduction of the declaration on A.F., A.2. (See K.R. 1912.)

Declaration.

The Court declare that No. . . . [rank, name, corps] illegally absented himself without leave [or other sufficient cause] at [station or place] . . . on the . . . day of . . . ; that he is still so absent, and that on the . . . [date on which the inventory of kit was taken] he was deficient, and that he is still deficient of the following articles :

.....

Names of	{	.....	President.
President		.....	Members.
and		.....
Members.	}	.....

In framing a charge of Losing by Neglect the date of inventory should be assigned.

Before a Court of Inquiry are entitled to find deficiencies they will require evidence :—

- that the absentee has been at some time previously in possession of a complete kit, or, at any rate, of the articles alleged to be deficient ;
- that an inventory of his kit has been taken, and at the taking of the inventory certain specified articles were deficient ;
- that none of the articles have since been recovered. (Any articles recovered will, of course, be omitted.)

When A.F., B. 115 is produced in evidence before a court-martial it is not necessary that A.B. 161 should be laid before the court for comparison with that document.

4. See r. 82.

Explanation of "Prescribed" and "Commanding Officer."

126. (A) The committing authority under ss. 59, 60, 61, 64, and 65 of the Army Act, shall include :—

Prescribed officer for committing, removing, and commuting authority, and for the purpose of ss. 43 and 73.

- (1) The general officer commanding in chief the command where the military convict or soldier under sentence may for the time being be ; the officer in charge of administration of that command ; the general or other officer commanding the district, division, or independent brigade, in or with which the military convict or soldier under sentence may for the time being be ; and the commander of the coast defences, or station, where the military convict or soldier under sentence may for the time being be ; and
- (2) When the convict or soldier under sentence is in India, the general or other officer in command of a division and his assistant adjutant generals ; the general or other officer in command of a brigade which does not form part of any division and his deputy assistant adjutant-general or brigade major.

But any officer in this sub-section mentioned shall not, by virtue thereof, be a discharging authority.

(B) The removing authority under section 64 of the said Act, as respects a soldier under sentence in the United Kingdom, and the

competent military authority under section 67 of the said Act, as respects a soldier under sentence elsewhere than in India, shall include any of the officers named in paragraph (1) of sub-section (A) of this rule; and as regards a soldier under sentence for the time being in India, the competent military authority under section 67 of the said Act shall include any of the officers named in paragraph (2) of sub-section (A) of this rule.

(c) Any of the officers named in paragraph (1) of sub-section (A) of this rule, shall be authorities having power under section 57 of the said Act, to mitigate, remit, or commute punishment awarded by sentence of a court-martial.

(d) The discharging authority under sections 64 and 65 of the Army Act shall include :—

In the United Kingdom, the officer commanding the command in which the soldier under sentence is, or an officer not under the rank of brigadier-general in or under whose command the soldier under sentence may for the time being be, provided he does not hold a command inferior to that of the officer who confirmed the sentence.

In India the general officer commanding the division and his assistant adjutant-general or an officer not under the rank of brigadier-general in or under whose command the soldier under sentence may for the time being be, provided he does not hold a command inferior to that of the officer who confirmed the sentence.

In a colony, an officer not under the rank of brigadier-general in or under whose command the soldier under sentence may for the time being be, provided he does not hold a command inferior to that of the officer who confirmed the sentence.

(E) The general officer to whom a complaint may be made in pursuance of section 43 of the Army Act shall as respects a soldier serving elsewhere than in India, be the general officer commanding-in-chief the command, or the general officer commanding the district, or station, where the soldier may for the time being be.

(F) The competent military authority for the purpose of section 73 (3) of the Army Act shall, as respects a soldier serving in the United Kingdom, include any officer, not under the rank of brigadier-general, in or under whose command the soldier may for the time being be.

Prescribed
procedure
for court of
inquest
(India)
under
s. 133.

127. When a court of inquest is required to be convened by the commanding officer under section 133 of the Army Act, the court shall be convened and inquest held in manner following :—

- (a) The commanding officer of the station will order the court to assemble.
- (b) The court will consist of three officers and of a medical officer.
- (c) The court shall not take evidence on oath, and shall warn every person who is accused or suspected that he is not required to give evidence criminating himself, but that any statement or evidence he gives may be used against him in the event of any further proceedings being instituted.
- (d) The court, after hearing the evidence, shall report to the officer commanding the station, the evidence as to the cause of the death, together with the written opinion of the medical officer of the court, on his examination of the body, as to the cause of death.

- (e) the commanding officer shall, as soon as practicable, forward the report of the court to the nearest civil magistrate having authority to hold an inquest on death, who may proceed thereon as if he had himself held the inquest.

128. The competent military authority in Part II of the Army Act, shall include the following officers, viz. :—

Prescribed officer for competent military authority (s. 101).

- (i) In India,

The Commander-in-Chief of the forces in India: the general or other officer in command of a division; and the general or other officer in command of a brigade which does not form part of any division.

- (ii) In any place situate out of India, and out of the United Kingdom, the general or other officer commanding the forces in that place; the general or other officer in charge of administration, or in command of a division or independent brigade in that place.

In addition to the above-mentioned officers it also includes :—

- (iii) For the purposes of sections 80, 82, 84, and 85 of the said Act, the commanding officer of the soldier, and every officer superior in command to that commanding officer, and not hereinbefore included :
- (iv) For the purposes of any transfer by consent under section 83 (2) any authority superior in command to the commanding officer of the soldier.
- (v) For the purposes of section 99, any officer having power to convene a district court-martial for the trial of the soldier.
- (vi) Such officer as may be directed from time to time by His Majesty's Regulations to perform in any place or for any purpose specified in that behalf the duty of the competent military authority¹.

1. See K.R. 597, directing other officers to act as the competent military authority for the purpose of A.A. 83 (7).

129. The expression "commanding officer," as used in the sections of the Army Act, relating to "*Courts-Martial*," to the "*Execution of Sentence*," and to the "*Power of Commanding Officer*," and in the provisions, consequential thereon, and in these Rules, means, in relation to any person, the officer whose duty it is, under the provisions of His Majesty's regulations, or, in the absence of any such provisions, under the custom of the service, to deal with a charge against that person of having committed an offence, that is, to dispose of it on his own authority¹.

Definition of "commanding officer."

It also, as far as relates to the summary award of any punishments for offences, being punishments which under the provisions of His Majesty's Regulations an officer commanding a squadron company, troop, or battery, is authorised to award, and so far as relates to a summary finding in a case of absence without leave, includes the officer commanding a squadron, company, troop, or battery².

1. Every officer, however temporary or casual his command over a person accused may be, will be within this definition if the custom of the service enables him to tell off the accused. In all of these rules "commanding officer" has the meaning given to it by this rule.

In the portions of the Army Act not above mentioned, "commanding officer" is not limited to the C.O. as defined by this rule, though the C.O. as so defined is often (see notes) the proper officer to act. See K.R., 456.

It is laid down in K.R., 457, 458, that the C.O. officer of a detachment has the same power of awarding summary punishment (as laid down in K.R. 493) as the C.O. of the corps, subject to any restrictions that may be imposed by superior authority.

2. See K.R., 484 and 501.

(M.L.)

Prisons and Detention Barracks Abroad.

Committal and removal of prisoners in one colony to authorised prisons in other colonies.

130. (A) A military prisoner who has been sentenced to imprisonment in any place out of the United Kingdom may, if he is in any place mentioned in the first column of the following table, be committed, or, if he has been committed to prison, be removed, if occasion arises, to a *military* detention barrack or prison wherever situate, or to an *authorised* prison situate in any place mentioned opposite thereto in the second column of the following table¹ :—

TABLE.

A soldier under sentence of imprisonment, and being in any place in any of the groups following :—	May be committed, or, if he has been committed to a prison, may be removed, to an authorised prison in—
--	---

GROUP I.

(American and Mediterranean.)

Canada.
Newfoundland.
Bermuda.
Gibraltar.
Malta.
Cyprus.
Egypt.

Any place in Group I (American and Mediterranean); or
In Group III (South African); or
In Group VII.

GROUP II.

(West Indian.)

West Indies, including—
Jamaica.
Turks and Caicos Islands.
Bahamas.
Barbados and Windward Islands.
Trinidad and Tobago.
Leeward Islands.
Honduras.
British Guiana.

Any place in Group II (West Indian);
or
In Group I (American and Mediterranean); or
In Group III (South African); or
In Group VII.

GROUP III.

(South African.)

South Africa, including—
Cape of Good Hope.
Natal.
Griqualand West.
Transvaal Colony.
Orange River Colony.
St. Helena.

Any place in Group III (South African);
or
In Group I (American and Mediterranean); or
In Group V (Australasian); or
In Group VII.

GROUP IV.

(West African.)

West African Colonies, including—
Sierra Leone.
Gambia.
Cape Verde Islands.
Lagos.

Any place in Group IV (West African);
or
In Group I (American and Mediterranean); or
In Group III (South African); or
In Group VII.

TABLE—continued.

GROUP V.

(Australasian).¹

Commonwealth of Australia.
New Zealand.
Fiji.
Falkland Islands.

Any place in Group V (Australasian); or
In Group I (American and Mediter-
ranean); or
In Group III (South African); or
In Group VII.

GROUP VI.

India, as defined by the Army Act, and
including—
Aden and Perim.
Mauritius.
Ceylon.
Hong Kong.
Straits Settlements.
Labuan.

Any place in Group VI; or
In Group I (American and Mediter-
ranean); or
In Group III (South African); or
In Group V (Australasian); or
In Group VII.

GROUP VII.

Channel Islands and Isle of Man.¹

Any place in Group VII.

This rule shall not authorise any removal from a prison in the United Kingdom to a prison elsewhere.

(B) A soldier sentenced to detention in any place out of the United Kingdom may be committed, or, if he has been committed to a detention barrack or branch detention barrack, be removed, if occasion arises, to a detention barrack or branch detention barrack wherever situate; but this rule shall not authorise any removal from a detention barrack or branch detention barrack in the United Kingdom to a detention barrack or branch detention barrack elsewhere.

1. This rule is rendered necessary by A.A. 65 (1), (c), under which a prisoner can only be confined in any authorised prison in any part of His Majesty's dominions other than that in which the sentence was passed, and other than the United Kingdom, if the prison is prescribed.

The main object, as regards a colony where there is no military prison, is to enable a prisoner to be removed with, or sent to, his regiment if the regiment is serving in that colony, but not to allow prisoners in any other case to be sent to that colony. No prisoners will be committed or removed to a colony where troops are not serving, without the consent of the government of that colony.

Prisoners will not, except for special reasons which must be at once reported to a superior authority for the information of the Secretary of State for War, be removed to a military prison in any place, if they could not be removed under this rule to an authorised prison in that place.

The Isle of Man, Channel Islands, and Cyprus are declared to be colonies for the purpose of imprisonment by the A.A. 187 (2), 190 (23).

PART III.—SUPPLEMENTAL.

131. Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office for the purpose of these rules, may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service¹.

Exercise
powers
vested in
holder of
military
office.

1. See A.A. 171.

(M.L.)

Cases un-
provided
for.

132. In any case not provided for by these rules such course will be adopted as appears best calculated to do justice.

Forms in
Appendices.

133. (A) The forms in the appendices to these rules should be followed in all cases in which they are applicable, and when used shall be valid in law, but a deviation from any such form will not, by reason only of such deviation, render any charge, warrant, order, proceedings, or other document invalid.

(B) An omission of any such form will not, by reason only of the omission, render any act or thing invalid.

(C) The notes to, and instructions in, the forms will be considered as instructions which it is expedient to follow in all cases to which the notes and instructions apply.

The Army Council may append to any of the forms when issued for use such further notes as they think fit, and any such notes will be considered as instructions which it is expedient to follow in all cases to which they apply.

Definitions.

134. In these rules, unless the context otherwise requires—

(A) The expression "proper military authority," when used in relation to any power, duty, act, or matter, means such military authority as, in pursuance of His Majesty's Regulations or the custom of the service, exercises or performs that power or duty or is concerned with that act or matter.

(B) The expression "Army Act" includes any Act, whether passed before or after the date of these rules, which amends or applies the Army Act; also any Act, whether passed before or after the date of these rules, which enacts an offence which is triable by court-martial¹.

(C) In any sentence of imprisonment, detention or field punishment passed after the date on which these rules come into operation the word "month" shall, unless the contrary is expressed, be construed as meaning "calendar month."

(D) Other expressions have the same meaning as if these rules formed part of the Army Act², and accordingly words in the singular number include the plural, and words in the plural number include the singular, and the masculine gender includes the feminine gender.

1. See, for instance, the Reserve Forces Act, 1882, and the T.R.F. Act, 1907.

2. See particularly A.A. 190, and note.

Construc-
tion of
rules.

135. (A) Time, for the purposes of any proceeding or other matter under these rules, shall be reckoned exclusive of Sunday, Good Friday, and Christmas Day, but any time reckoned for the purposes of Rule 6, or of any punishment or of any deduction of pay shall include those days.

(B) Any report or application directed by these rules to be made to a superior authority, or proper military authority, shall be made in writing through the proper channel, unless the authority, on account of military exigencies or otherwise dispenses with the writing.

(C) These rules shall apply to a person subject to military law as an officer¹, in like manner, so nearly as circumstances admit, as if he were an officer, and to a person subject to military law as a soldier², in like manner, so nearly as circumstances admit, as if he were a soldier, subject nevertheless to the restrictions contained in the Army Act, and to this qualification—that nothing in these rules shall confer on any person not an officer or soldier any jurisdiction or power as an officer or soldier.

(D) Nothing in these rules shall be construed to be contrary to or inconsistent with any provision of the Army Act.

1. See A.A. 175.
2. See A.A. 176.

136. These rules shall, save as otherwise expressly provided, apply to the Channel Islands and the Isle of Man in like manner as if they were part of the United Kingdom¹.

Application of rules to Channel Islands, and Isle of Man.

1. The Channel Islands and Isle of Man are Colonies for the purpose of imprisonment and of detention; see A.A. 187 (2), and r. 130.

137. These rules shall apply in every place, whether within or without His Majesty's dominions.

Extent of application of rules.

138. These rules may be cited as the Rules of Procedure, 1907.

Short title.

139. (A) The foregoing rules shall, if promulgated in any general order in any place, come into full force in that place from and after the date named in the general order, and so far as they are not already in operation on the thirty-first day of December next after the date thereof shall come into operation on that day; and on the day on which these rules come into operation in any place, the Rules of Procedure, 1899, as amended by any subsequent rules, so far as they are then in force, shall determine.

Commencement of rules.

(B) Any court-martial, proceeding, or thing held, done, or commenced under the last-mentioned Rules of Procedure, shall be as valid, and may be completed and carried into effect as if those rules were still in force.

His Majesty has made the foregoing Rules in pursuance of the Army Act, and those Rules will therefore be observed by all persons concerned.

(Signed) R. B. HALDANE.

War Office,
20th August, 1907.

The foregoing Rules are to be observed by the Royal Marine Forces when subject to the Army Act, until further Rules are made in pursuance of Section 70 of the said Act.

Admiralty,
20th August, 1907.

(Signed) TWEEDMOUTH.
(Signed) J. A. FISHER.

Appendices to Rules of Procedure, 1907.

App. I.

FIRST APPENDIX.

FORMS OF CHARGES.

NOTE AS TO USE OF FORMS OF CHARGES.

(1.) Every charge-sheet will begin as shown in the forms in Part I of the forms of charges which are given as examples.

The description of an officer or soldier of the regular forces by his rank and corps is a sufficient averment that he is an officer or soldier, and that he is amenable to military law. In other cases, words must be added to show that the person is amenable to military law. (See Rule 10.)

(2.) The commencement of the charge-sheet (according to the form in Part I) will be followed by the charge or charges.

(3.) Each charge will consist of two parts: a statement of the offence, and a statement of the particulars. (Rule 11 (B).)

(4.) The statement of the offence will be in one of the forms in Part II.

(5.) Where two or more words or expressions occur in Part II, bracketed together one under the other, the particular word or expression should be used which most accurately describes the offence which appears to the officer framing the charge to be capable of proof by legal evidence.

(6.) Where the officer framing the charge is doubtful whether the offence so capable of being proved by legal evidence is more accurately described by one word, or expression, or by another, he may frame two or more alternative charges, each charge containing one of the words or expressions which appear to the officer to be applicable to the facts as capable of proof.

(7.) Where two or more of the words or expressions bracketed together appear, when coupled together with the word "and," accurately to describe the offence, the charge may couple together such words or expressions; but in no case must the charge couple with the word "or" two or more of the words or expressions bracketed together. (See Rule 11 (A).)

(8.) For example, a man may be charged with making away with his arms, ammunition, *and* necessities; but a charge for making away with his arms, ammunition, *or* necessities will be a bad charge.

(9.) A man should not be charged, however, with making away with by pawning *and* selling his arms and necessities, as in such case he is charged with at least two distinct offences, which ought to be included in at least two distinct charges, one for making away with by *pawning* his arms and necessities, the other for making away with by *selling* his arms and necessities; but he may, if desirable, be charged in four distinct charges: one for pawning his arms, another for pawning his necessities; a third for selling his arms and a fourth for selling his necessities.

(10.) In the former example (para. 8) the offence is the sale of some article which he is prohibited from selling, and is the same offence although committed in respect of different articles. In the second example (para. 9) there are two distinct offences of making away with his articles—(a) by pawning, (b) by selling—although committed in respect of the same objects—arms and necessaries.

(11.) In a few cases, shown in italics bracketed thus [] (as for instance, in s. 4 (1 *b*), s. 6 (1), (e), (g), and (h), and s. 24), words may be inserted in the charge which are not in the Act. In these cases the Act contains a general expression such as “other person,” or “other place,” or “other means,” and the officer framing the charge must omit these words, and insert a description of the person, place, or means.

(12.) Words inserted in brackets, thus [], without italics, must be adopted or not according to circumstances. For example, if the offender was not on active service, the words, “when on active service,” must be omitted.

(13.) In some cases (for example, s. 10 (4), s. 14, s. 15 (3), s. 16, and ss. 18, 27 (3) (4), and 37), the offence can only be committed by an officer or by a non-commissioned officer or by a soldier. The forms of charge do not contain any reference to this fact, inasmuch as it will appear from the commencement of the charge whether the accused is or is not an officer, non-commissioned officer, or soldier, and therefore capable of committing the offence. Care, however, must be taken not to charge an officer with an offence which a soldier only can commit, nor a soldier with an offence which an officer only can commit. In some cases the offence, even though not expressed in the Act to be limited to an officer or soldier, can, from the nature of things, only be committed by an officer or soldier. For example, the offence in s. 4 (1) (a) can only be committed by an officer, while the offence of losing regimental necessaries (s. 24) can only be committed by a soldier.

(14.) The statement of the offence in each charge will be followed by the appropriate statement of particulars, commencing with the words “in that he,” &c., or “in having,” &c., and stating in brief ordinary language what the accused is alleged to have done.

(15.) The words “in that he” will be followed by the verb in the past tense; the words “in having” will be followed by the past participle. The sentence stating the particulars will be framed more easily sometimes in the one form, sometimes in the other.

(16.) In the case of several charges, the particulars in one charge may refer to the particulars in another (Rule 11 (E)); as, for example, “in having done the acts alleged in the particulars to the first charge,” or “in that, at the place and time aforesaid, he was deficient in the necessaries above mentioned in the second charge, which it was his duty to have.” If the accused is acquitted on any charge in which full particulars were set out, and is convicted on a charge which referred to those particulars, the particulars referred to must be treated as having been set out in full in the charge on which the accused is convicted, and must be set out in full in any record of conviction in which the particulars are set out.

(17.) The statement of particulars should specify all the ingredients necessary to constitute the offence: for example, if the charge is under s. 9 (2), for disobeying a lawful command, the “particulars” must state the command, and show that it was given by a superior officer, and also how the accused disobeyed the command; while, if the charge is under s. 9 (1), the “particulars” should

App. I.

also show how the command was given personally, and how the accused showed a wilful defiance of authority.

(18.) The "particulars" should always give a general description of the place where the offence was committed, such as the station or town or "the line of march," and, if it is material to the charge and is known, the exact place. The prepositions "near" or "between" may be used (for instance, "at or near," "between") to assist in describing a place not exactly known, but they must never be used where the exact place is of the essence of the offence.

(19.) The "particulars" should always state the date at which the offence was committed. If the exact date or time is unknown, the offence may be stated as having been committed "on or about" a particular day or time. This must never be done where the time is of the essence of the offence, as, for example, the case of absence without leave or being drunk on a post.

(20.) In some cases the offence may be stated with most accuracy as having been committed between two days or between two times: as, for instance, in the case of absence without leave, or of quitting a post; in other cases "between" may be used in consequence of the exact day or exact time not being known.

(21.) The words "or near" and "or about" and "between" should never be used unless it is impossible to express the exact place or time, or the exact place or time is clearly unimportant, or unless the word "between" is the most accurate expression of the place or time.

(22.) In many cases, as, for instance, where the defence is an alibi, the time and place may be of the utmost importance in proving that alibi, although it is not the essence of the offence.

(23.) There must be added at the end of the "particulars" a statement of any expenses, loss, or damage in respect of which the court-martial will be asked to award compensation under Section 137 or 138 (Rule 11 (F)). For example, there may be added to the "particulars" in the case of a charge of fraudulent enlistment, an averment to the effect that the accused thereby obtained a free kit, value* pounds, and in the case of a charge under s. 10 (2) or (3), that the accused thereby damaged

's coat, to the value of shillings, and
's watch to the value of

shillings; and other statements may be made, according to the facts.

(24.) If, however, the expenses, loss, or damage were caused by an act or omission which constitutes another offence, specially specified in the Act, that act or omission should be charged as a separate offence; for example, if a man deserts, and is deficient in his regimental necessaries, he should be charged in a separate charge for loss by neglect of his necessaries. It would not be proper to state it as a consequence of the desertion, or to award compensation for it upon a conviction for desertion only.

(25.) A charge for an offence under the Acts relating to the auxiliary forces or reserve forces, or any other Act other than the Army Act must, in accordance with the Rules of Procedure 11 and 134 (B), follow as nearly as possible the words of the Act; and where the enactment is in the alternative, each charge must, as in the following forms, state only one of the alternatives.

* See K.R., paras. 561 and 563 and footnote.

FORMS OF CHARGES.

App. I.

PART 1.

Commencement of Charge-Sheet.

The accused [*number, rank, name, battalion, regiment*] a soldier [officer] of the regular forces, *or,*

The accused [*rank, name*] an officer of the regular forces on the active list on half-pay, *or,*

The accused [*rank, name*] retired pay [*or pensioner, or reservist*] employed on military service under the orders of an officer of the regular forces, *or,*

The accused [*rank, name*] an officer of the reserve of officers ordered on duty (or service), *or,*

The accused [*rank, name, corps (if any)*] an officer of the special reserve of officers, *or,*

The accused [*rank, name, corps*] an officer of the territorial force, *or,*

The accused [*number, rank, name, battalion, regiment*] a soldier of the territorial force out for training [*or otherwise subject to military law*], *or,*

The accused [*rank, name, regiment*] an officer of the militia [*or* an officer of the yeomanry commissioned since the 16th day of August, 1901], *or,*

The accused [*rank, name*] an officer of the volunteer battalion of the *regiment* [*or* an officer of the yeomanry commissioned before the 17th day of August, 1901], whose corps is on actual military service [*or who is otherwise subject to military law*], *or,*

The accused [*rank, name, corps*] an officer [a soldier] of a colonial force raised by order of His Majesty, and serving under the orders of an officer of the regular forces, *or,*

The accused [*name*] being a person subject to military law as an officer [under the provisions of s. 175 (7) [*or* (8)] of the Army Act], *or,*

The accused [*number, rank, name*] a special reservist out for training [*or otherwise subject to military law*], *or,*

The accused [*name*] a follower [sutler] of His Majesty's forces being subject to military law as a soldier [under the provisions of s. 176 (9) [*or* (10)] of the Army Act],
is charged with—

Where the offence has been committed by a person while subject to military law, and he has ceased to be so subject at the time when he is charged (in accordance with the provisions of s. 158 of the Army Act; as, for example, if a soldier has been transferred to the reserve, or discharged, or if the training period of a special reservist or man of the territorial force has expired, the commencement of the charge will run as follows:—

The accused [*name*] is charged with having, while being [*number, rank*] of the *battalion* *regiment* [a soldier of

App. I. the regular forces] [*or otherwise subject to military law*], committed the following offence [offences], namely,

or,

The accused [*name*] is charged with having, while being [*number, rank*] of the battalion, regiment, a special reservist [*or man of the territorial force*] out for training [*or otherwise subject to military law*] committed the following offence [offences], namely,

PART II.

Statement of Offences.

OFFENCES IN RESPECT OF MILITARY SERVICE.

Section 4.

- (1a.) Shamefully { abandoning
delivering up } { a garrison.
a place.
a post.
a guard.
- (1b.) Using { compel
means to } induce { a governor
a commanding officer
[or other person] } shamefully { abandon
deliver up } { a garrison,
a place,
a post,
a guard, } which it was his duty to defend.
- (2.) Shamefully casting away his { arms
ammunition
tools } in the presence of the enemy.
- (3a.) Treacherously { holding correspondence with
giving intelligence to } the enemy.
- (3b.) Treacherously { sending a flag of truce to the enemy.
Through cowardice }
- (4a.) Assisting the enemy with { arms.
ammunition.
supplies.
- (4b.) Knowingly { harbouring
protecting } an enemy not being a prisoner.
- (5.) When a prisoner of war, voluntarily { serving with
aiding } the enemy.
- (6.) Knowingly doing, when on active service, an act calculated to imperil the success of { His Majesty's forces.
part of His Majesty's forces.
- (7.) Misbehaving { inducing others to
misbehave } before the enemy in such manner as to show cowardice.

Section 5.

- (1.) When on active service, without { in order to secure prisoners.
orders from his superior officer, in order to secure horses.
leaving the ranks } on pretence of taking wounded men to the rear.
- (2.) When on active service { destroying
damaging } property without orders from his superior officer.
- (3a.) When on active service, being taken prisoner { by want of due precaution.
through disobedience of orders.
through wilful neglect of duty.
- (3b.) After being taken prisoner when on active service, failing to rejoin His Majesty's service when able to rejoin the same.
- (4.) When on active service, without { holding correspondence with
due authority } { giving intelligence to
sending a flag of truce to } the enemy.
- (5.) When on active service { by word of mouth
in writing
by signals
[otherwise]
in action } { spreading reports
calculated to
create unnecessary
alarm.
despondency.
- (6.) When on active service { previously to going
into action } { using words
calculated to create } alarm.
despondency.

Section 6.

- (1a.) When on active service, leaving his commanding officer to go in search of plunder.

(1b.) [When on active service,] leaving his { guard
picquet
patrol
post } without orders from his superior officer.

(1c.) [When on active service,] forcing a safeguard.

(1d.) [When on active service,] { forcing
striking } a soldier when acting as sentinel.

(1aa.) [When on active service,] { the provost-
marshal
an assistant
provost-
marshal
an officer
a non-com-
missioned
officer
[other per-
son] } impeding { legally
exercising
authority } under on behalf of { the provost-
marshal.

(1ab.) [When on active service and] when called on, refusing to assist in the execution of his duty { an officer
a non-com-
missioned
officer
[other per-
son] } { legally
exercising
authority } under on behalf of { the provost
marshal.

(1ac.) [When on active service,] doing { provisions } to the forces.
violence to a person bringing { supplies }

(1ad.) [When on active service,] committing an offence against the { property
person } of an inhabitant of { the country in which
he was serving.

(1ae.) [When on active service,] breaking into a { house
[other place] } in search of plunder.

(1ax.) [When on active service,] by { discharging firearms
drawing swords
beating drums
making signals
using words
[any means whatever] } intentionally
occasioning false { alarms } { in action.
on the march.
in the field.
[elsewhere.] }

(1ia.) [When on active service,] treacherously making { parole
watchword
countersign } to a person not entitled to receive it.

(1ib.) [When on active service,] treacherously giving a { parole
watchword
countersign } different from what he received.

(1j.) [When on active service,] irregularly { detaining
appro-
priating
to his
own } { corps
battalion
detachment } { contrary to
orders
issued in
that respect } { provisions
supplies } proceeding to the forces.

(1k.) When a soldier acting as sentinel [on active service,] { sleeping on his post.
being drunk on his post.
leaving his post before he was regularly relieved. }

(2a.) By { discharging firearms
drawing swords
beating drums
making signals
using words
[any means whatever] } negligently
occasioning false { alarms } { in action.
on the march.
in the field.
[elsewhere.] }

(2aa.) Making known the { parole
watchword
countersign } to a person not entitled to receive it.

2ab.) Without good and sufficient cause giving a { parole
watchword
countersign } different from what he received.

MUTINY AND INSUBORDINATION.

Section 7.

- (1) { Causing
Conspiring with other
persons to cause } a mutiny } in forces belonging { regular forces.
sedition } to His Majesty's { reserve forces.
auxiliary forces.
navy.
- (2a.) Endeavouring to seduce a { regular forces
person in His Majesty's { reserve forces
auxiliary forces } from allegiance to His Majesty.
navy
- (2b.) Endeavouring to persuade { regular forces
a person in His Majesty's { reserve forces
auxiliary forces } to join in { a mutiny.
sedition.
navy
- (3a.) Joining in { a mutiny } in forces belonging to His Majesty's { regular forces.
sedition } { reserve forces.
auxiliary forces.
navy.
- (3b.) Being present at and { a mutiny } in forces belonging to His { regular forces
not using his utmost { sedition } Majesty's { reserve forces,
endeavours to sup- } { auxiliary forces.
press } navy.
- (4.) After { an actual mutiny } in forces { regular forces
coming to the { intended mutiny } belonging { reserve forces
knowledge of { actual sedition } to His { auxiliary forces
intended sedition } Majesty's { navy
navy

Section 8.

- (1.) { Striking
Using violence to
Offering violence to } his superior officer, being in the execution of his office.
- (2a.) [When on active service,] { striking
using violence to } his superior officer.
offering violence to
- (2b.) [When on active service,] using { threatening
insubordinate } language to his superior officer.

Section 9.

- (1.) Disobeying, in such manner as to show a wilful defiance of authority, a lawful command given personally by his superior officer in the execution of his office.
- (2.) [When on active service,] disobeying a lawful command given by his superior officer.

Section 10.

- (1.) When concerned in a fray { refusing to obey
striking
using violence to } an officer who ordered him
offering violence to } into arrest.
- (2.) { Striking
Using violence to } a person in whose custody he was placed.
Offering violence to
- (3.) Resisting an escort whose duty it was { to apprehend him.
to have him in charge.
- (4.) Breaking out of { barracks.
camp.
quarters.

Section 11.

- (1.) Neglecting to obey { general
garrison } orders.
[other]

DESERTION, FRAUDULENT ENLISTMENT, AND ABSENCE WITHOUT LEAVE.

Section 12.

- (1.) { When on active service } deserting His Majesty's service.
{ When under orders for } attempting to desert His Majesty's service.
active service }
- (2.) { When on active service } persuading
{ When under orders for } endeavouring to persuade } a person subject to mili-
active service } procuring } tary law to desert from
attempting to procure } His Majesty's service.

Section 13.

- (1.) and (2.) Fraudulent enlistment.

Section 14.

(1.) Assisting a person subject to military law to desert His Majesty's service.

2.) When co-g- { the desertion
nizant of { the intended
 { desertion } giving notice to his commanding officer.
 { of a per- } taking some
 { son sub- } steps in his
 { ject to } power to
 { military } cause the } deserter
 { law not } deserter } to be appre-
 { forth- } { hended.
 { with } {

Section 15.

(1a.) Absenting himself without leave.

(2a.) Failing to appear at the place of { parade } appointed by his commanding officer.

(2b.) Without leave, before he was re- { parade } appointed by his commanding officer.

(2c.) Without urgent necessity, quitting the ranks.

(3.) { When in camp } being { beyond the limits } general { orders, without a pass
 { When in garrison } fixed by { garrison } or written leave
 { When [elsewhere] } found { in a place prohi- } [other] { from his command-
 { bited by } ing officer.

4.) Without leave from his commanding officer or due cause absenting himself from school when duly ordered to attend there.

DISGRACEFUL CONDUCT.

Section 16.

Behaving in a scandalous manner, unbecoming the character of an officer and a gentleman.

Section 17.

(a.) { When charged } the care } of public } money { stealing
 { with } the distri- } of regimental } goods { fraudulently
 { When concerned } bution } } { misapplying } the same.
 { in } { } { } { embezzling }
 { When charged } the care } of public } money { stealing
 { with } the distri- } of regimental } goods { fraudulently
 { When concerned } bution } } { misappli- } thereof.
 { in } { } { } { cation }
 { When charged with } the care } of public } goods wilfully damaging
 { When concerned in } the distribution } of regimental } the same.

Section 18.

(1a.) Malingering.

(1b.) { Feigning } disease.
 { Producing } infirmity.(2a.) Wilfully { maiming { himself } with intent } himself
 { injuring { another soldier } thereby to } such other
 { render } soldier } unfit for service.

(2b.) Causing himself to be { maim'd } by some person, with intent thereby to render himself unfit for service.

(3.) { Being wilfully guilty of misconduct by } he { produced } disease.
 { means of which misconduct } aggravated } the cure of } infirmity
 { Wilfully disobeying orders by means } delayed }
 { of which disobedience } of which disobedience }

4a.) { Stealing } money { the property of { a comrade.
 { Embezzling } goods } belonging to a regimental { an officer.
 { public money.
 { public goods.

(4b.) Receiving, knowing { stolen } money { the property of { a comrade
 them to be { embezzled } goods } belonging to a { mess.
 { public money.
 { public goods.

5a.) Such an offence of a fraudulent nature as is mentioned in sub-section five of section eighteen of the Army Act.

5b.) Disgraceful conduct of { a cruel } kind.
 { an indecent }
 { an unnatural }

DRUNKENNESS.

Section 19.

Drunkenness.

OFFENCES IN RELATION TO PERSONS IN CUSTODY.

Section 20.

- (1.) When in command of a { guard
picquet
patrol
post } [wilfully] releasing without proper authority a person committed to his charge.
- (2.) { Wilfully
Without reason-
able excuse } allowing to escape } committed to his charge { keep.
a person } whom it was his duty to { guard.

Section 21.

- 1a.) Unnecessarily detaining a { arrest
person in } without bringing him to trial.
confinement
- 1b.) Unnecessarily failing to bring a person's case before the proper authority for investigation.

- (2.) After having committed a person to the custody of { an officer
a non-
commissioned
officer
a provost-
marshal
an assistant
provost-
marshal } falling without reasonable cause to deliver { at the time of
the commit-
tal or as soon
as practicable
within 24
hours after
such com-
mittal } to the officer to the non-commissioned officer to the provost-marshal to the assistant-provost-marshal { into whose custody the person was committed, an account in writing signed by himself of the offence with which the person so committed is charged.
- (3.) When in command of a guard failing { as soon as he was relieved from guard his duty within twenty-four hours after a person was committed to his charge } to give in writing to the officer to whom he was ordered to report { that person's name.
that person's offence so far as known to him.
the name } of the officer { by whom the person was charged.
the rank } of the [person] { by whom the person was committed to his custody,
the written account given him } officer [person]

Section 22.

- (1.) When in { arrest
confinement
prison
[other lawful custody] } escaping.
attempting to escape.

OFFENCES IN RELATION TO PROPERTY.

Section 23.

- 1.) Conniving at the exaction of an exorbitant price for { house
stall } let to a sutler.
- 2.) { Laying a
duty upon
Taking a fee
in respect of
Taking an
advantage
in respect of
being inter-
sted in } { the sale of provisions
the sale of merchandise } brought into { a garrison
a camp
a station
a barrack
a [place] } in which { com-
mand
he
has
autho-
rity.
- { the sale of
the purchase of } provisions { for the use of some of His Majesty's
stores } forces.

Section 24.

- (1.) { Making away with by
Being concerned in making
away with by } { pawning
selling
destruction
[otherwise] } { his arms.
his ammunition.
his equipments.
his instruments.
his clothing.
his regimental necessaries.
a horse of which he had charge.
- (2.) Losing by neglect { his arms.
his ammunition.
his equipments.
his instruments.
his clothing.
his regimental necessaries.
a horse of which he had charge.
- (3.) Making away with by { pawning
selling
destruction
[otherwise] } a military decoration granted him.
- (4.) Wilfully injuring { his arms.
his ammunition.
his equipments.
his instruments.
his clothing.
his regimental necessaries.
a horse of which he had charge.
a military decoration granted him.
property belonging to { a comrade.
an officer.
a regimental mess.
a regimental band.
a regimental institution.
public property.
- (5.) Ill-treating a horse used in the public service.

OFFENCES IN RELATION TO FALSE DOCUMENTS AND STATEMENTS.

Section 25.

- (1.) In a { report
return
muster roll
pay list
certificate
book
route
[other
document] } made by him
signed by him
of the contents of
which it was his
duty to ascertain
the accuracy } knowingly making
being privy to the
making of { a false statement.
a fraudulent state-
ment.
an omission with
intent to defraud.
- (2.) { Knowingly, and
with intent to } injure some
person } { suppressing
making away with } a document
defacing } which it
altering } was his
duty to } preserve.
produce.
- (3.) Where it was his official duty to make a declaration respecting any matter knowingly making a false declaration.

Section 26.

- (1.) When signing a document
relating to { pay
arms
ammunition
equipments
clothing
regimental
necessaries
provisions
furniture
bedding
blankets
sheets
utensils
forage
stores } leaving in blank a material part for
which his signature was a voucher.
- (2.) { Refusing to
By culpable neglect
omitting to } make { a report
send { a return } when it was his duty to { make.
send.

- (6a.) { Offering menace to { a constable } to make him give billets contrary to
Using { compulsion on { a civil officer } the Army Act.
- (6b.) { Using menace { a constable { tending { deter { him from
Offering { compul- stable { to { discour- perform- his duty under
sion on { a civil officer { tending to induce him to do the provisions
of the Army
Act relating
to billeting.
- (7.) { Using menace { a person
Offering { compulsion { tending to ob- consent, a { person
on { lige him { not duly billeted upon { horse
him { to furnish some accom- him in pursuance of { the provisions of
modation which he is the Army Act
not required to furnish relating to billeting.
by

Section 81.

- SECTION 21.
- (1.) Willfully demanding { a carriage
animals
vessels
aircraft } which were not actually required for purposes
Act, relating to the impressment of carriages, as authorised by the Army Act.
 - (2.) Failing to comply with the provisions of the Army { the payment of sums due
Act, relating to the impressment of carriages, as regards for carriages.
the weighing of the load.
to travel against the will
of the person in charge
thereof, beyond the
proper distance.
to carry against the will
of the person in charge
thereof, a greater
weight than he was
required by the said
provisions to carry.
 - (3.) Constraining { a carriage
an animal
a vessel } { furnished in pursuance of
the provisions of the
Army Act relating to
the impressment of
carriages
 - (4.) Failing to discharge as
speedily as practicable { a carriage
an animal
a vessel
an airship
an aeroplane
[or other aircraft] } furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages.
 - (5.) { Compelling
Permitting
the compelling of } { a person
in charge
of } { a carriage
an animal
a vessel
an airship
an aeroplane
[or other aircraft] } { furnished in
pursuance of
the provisions
of the Army
Act relating
to the impressment
of carriages
to take thereon } { baggage } not entitled to be
stores } carried.
though
not furnished on
a requisition
of emergency } { soldier
servant
woman
person
sick.
 - (6.) { Ill-treating
Permitting
the ill-treatment of } { a person in
charge of } { a carriage
an animal
a vessel
an airship
an aeroplane
[or other aircraft] } { furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages.
 - (7.) { Using
Offering } { menace
to compulsion on } { a constable } { to make
him
provide } { a carriage
an animal
a vessel
an airship
an aeroplane
[or other aircraft] } { which he was not bound in
pursuance of the provisions
of the Army Act
relating to the impressment
of carriages, to
provide.
him from } his duty
performing a part of } in relation
to the providing } of
carriages,
animals,
vessels,
aircraft.
 - (8.) Forcing { a carriage
an animal
a vessel
an airship
an aeroplane
[or other aircraft] } { from the owner thereof.
- (M.L.)
- 2 T

OFFENCES IN RELATION TO ENLISTMENT.

Section 32.

- (1.) After having been { discharged with disgrace from a part of His Majesty's forces dismissed with disgrace from the navy } { enlisting in the regular forces without declaring the circumstances of his } discharge. dismissal.

Section 33.

- (1, 2.) Making a wilfully false answer to a question set forth in the attestation paper which was put to him by, or by direction of, the justice before whom he appeared for the purpose of being attested.

Section 34.

- (1.) Being concerned in the enlistment for service in the regular forces of a man when he { knew had reasonable cause to believe } such man to be so circumstanced that by enlisting he committed an offence against the Army Act.
- (2.) Wilfully contravening { the enactments of the Army Act [other enactments] the regulations of the service } in a matter relating to the enlistment of soldiers of the regular forces.

MISCELLANEOUS MILITARY OFFENCES.

Section 35.

- (1.) Using { traitorous disloyal } words regarding the Sovereign.

Section 36.

- (1.) Without due authority { verbally in writing by signal [otherwise] } disclosing { the numbers of the position of some forces some magazines of the forces some stores of the forces } at such time and in such manner as to have produced effects injurious to His Majesty's service.
- { some preparations for some orders relating to } { operations of some forces } { movements }

Section 37.

- (1.) { Striking ill-treating } a soldier.
- (2.) After receiving the pay of { an officer a soldier } unlawfully detaining unlawfully refusing to pay } the same when due.

Section 38.

- (1.) { Fighting, Promoting Being concerned in Conniving at fighting } a duel.
- (2.) Attempting to commit suicide.

Section 39.

- (1.) On application being made to him { neglecting refusing } { to deliver over to the civil magistrate to assist in the lawful apprehension of } an officer a soldier { accused of an offence punishable by a civil court.

Section 40.

- (1.) { An act Conduct Disorder Neglect } to the prejudice of good order and military discipline.

Section 41.

- (1-4.) { When on active service In Gibraltar In some place not in the United Kingdom or Gibraltar and more than one hundred miles as measured in a straight line from any city or town in which he can be tried by a competent civil court for the offence } committing the offence of { treason. murder. manslaughter. treason-felony. rape.

(5.) Committing a civil offence, that is to say [state the offence according to English law, either using legal terms, e.g., arson, larceny, larceny from the person, assault, robbery, with violence, &c., or, in ordinary language, e.g., stealing, maliciously injuring property, setting fire to a house, &c.] (a)

(a) In describing a civil offence reference should be had to the Table of offences at the end of Ch. VII.

Appendix I.—Illustration of Charge.

Section 155.

(1-3.)	{ Negotiating Acting as agent for Aiding Conniving at	{ the { sale purchase } of a commission in His Majesty's regular forces.	{ of any valuable consideration in respect of any { promotion in retirement from employment in }	{ His Maje- ty's regular forces.
		{ the { giving receiving }		
		{ any exchange made in manner not autho- rised by regulations made in pursuance of the Regimental Exchanges Act, 1875, and in respect of which a	{ sum of money [consideration] }	{ has been { given. received.

ILLUSTRATION OF CHARGE.

App. I.

Notes.—The following is an illustration of a complete charge-sheet, with statement of offences and particulars, as it would be placed before a district court-martial.

CHARGE-SHEET

The accused, No. 153, Private John Smith, 2nd Battalion shire Regiment, a soldier of the regular forces, is charged with—

Using threatening language to his superior officer—

in that he

at Topsham Barracks, Exeter, on the 20th January, 19 , said to Serjeant William Robinson, the shire Regiment, "I will punch your head," or words to that effect.

First
charge.
Sec. 8 (2).

Resisting an escort whose duty it was to have him in charge—

in that he

at Exeter, on the 20th January, 19 , resisted the escort taking him to the guard detention room, and kicked Private John Jones, one of the said escort, and damaged the trousers of Private James Brown, another of the said escort, to the value of five shillings.

Second
charge.
Sec. 10 (3).

A. B.,

Exeter, Commanding Depot shire Regiment.
22nd January, 19 .

To be tried by a district court-martial.

X. Y.,

Commanding No. District,
(or Staff Officer who should sign for
Commanding No. District.)

Exeter,
24th January, 19 .

(M.L.)

2 T 2

*The following further Illustrations of Charges will be found useful.
They are not part of the Appendix to the Rules of Procedure.*

FURTHER ILLUSTRATIONS OF CHARGES.

Note.—The words in brackets in the following illustrations of charges do not necessarily form part of the charge, but are sometimes alternatives, and sometimes are inserted as aggravating or explaining the offence, or for the purpose of the award by the court of stoppages from pay.

Where the words in brackets are “when on active service” they alter the gravity of the charge, and are very material, but are inserted in brackets because the charge will be a good charge without them, although if they are omitted the charge will be for a less grave offence.

The words “soldier of the regular forces” in the description of the accused are not essential where he is described as belonging to a regiment or battalion in the regular forces. See, however, Note on p. 676.

A second charge may be added to the charge-sheet as an alternative to the first charge in those cases (some of which are mentioned in the notes) where it is doubtful whether the offence committed by the person amounted to one charge or to the other.

No. 1.

CHARGE-SHEET.

- Sec. 4 (2). The accused, No. , Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—
Shamefully casting away his arms in the presence of the enemy,
in that he, at , on , when on outlying picquet, and attacked
by the enemy, shamefully cast away his rifle, left his picquet, and ran away.

No. 2.

CHARGE-SHEET.

- Sec. 4 (2). The accused, No. , Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—
Misbehaving before the enemy in such a manner as to show cowardice,
in that he, at , on , during an attack on , and
when under the enemy's fire, fell out of the ranks, under pretence of being
unable to march further.

No. 3.

CHARGE-SHEET.

- Sec. 5 (1). The accused, No. , Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—
*When on active service, without orders from his superior officer, leaving the
ranks on pretence of taking wounded men to the rear,*
in that he, at , on , when in the ranks, and during an attack
upon , without orders from his superior officer, on pretence
of taking to the rear Lieutenant who was
wounded, left the ranks.

No. 4.

CHARGE-SHEET.

- Sec. 5 (2). The accused, No. , Private , Battalion, Regiment,
a soldier of the Regular Forces, is charged with—
*When on active service, wilfully destroying property without orders from his
superior officer,*
in that he, on , in , and encamped near the village
of , without orders from his superior officer, wilfully set fire to
a dwelling-house, situate in the said village.

No. 5.

CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, Sec 6 (1a)
a soldier of the Regular Forces, is charged with—

When on active service leaving his commanding officer to go in search of plunder,
in that he, on , when belonging to a force in military occupation
of , and when marching with his battalion under Lieutenant-Colonel , through the town of , left his commanding officer, and went in search of plunder.

No. 6.

CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment, Sec. 6 (1c).
a soldier of the Regular Forces, is charged with—

[When on active service] forcing a safeguard,
in that he, at , on , in , wilfully, and after being duly warned, entered a dwelling-house in street, at , in which, by orders of the General commanding, Serjeant had been placed as a safeguard, for the protection of the occupants and the property therein and took therefrom five bottles of wine, value , or thereabout.

No. 7.

CHARGE-SHEET.

The accused, No. , Private , Battalion, Regiment. Sec. 6 (1-).
a soldier of the Regular Forces, is charged with—

[When on active service] forcing a soldier when acting as sentinel,
in that he, at , on , after being warned by the sentry on No. Post, Guard, not to pass, passed the said sentry

No. 8.

CHARGE-SHEET.

The accused, No. . Private , Battalion, Regiment, Sec 6 (1/).
a soldier of the Regular Forces, is charged with—

[When on active service] doing violence to a person bringing provisions to the forces,
in that he at , on assaulted one , a sutler, who was bringing into camp bread and vegetables for the use of the troops [and forcibly took from him a portion of the same, value].

No. 9.

CHARGE-SHEET.

The accused, A.B., sutler, being subject to military law as a soldier by Sec. 6 (1/).
reason of accompanying His Majesty's troops on active service in [Egypt], is charged with—

When on active service committing an offence against the person of a resident in the country in which he was serving,
in that he, at , on , committed a rape on of

No. 10.

CHARGE-SHEET.

The accused, No. Private , Battalion, Regiment, Sec. 6 (1/).
a soldier of the Regular Forces, is charged with—

When on active service committing an offence against the person of an inhabitant of the country in which he was serving,
at , in [Egypt] on assaulted of in that he,

No. 11.

CHARGE-SHEET.

Sec. 6 (1g). The accused, No. , Private , Battalion, Regiment,
a soldier of the Regular Forces, is charged with—
[When on active service] breaking into a house in search of plunder
in that he, at , in [Egypt] , on broke open the front
door of a dwelling-house No. in street, and entered it in
search of plunder.

No. 12.

CHARGE-SHEET.

Sec. 6 (1h). The accused, No. , Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—
[When on active service] by discharging fire-arms, intentionally occasioning
false alarms on the march,
in that he, on , when on the march with his Battalion
between and , by intentionally discharging his rifle
occasioned a false alarm.

Note.—If there is a doubt as to whether the discharge of the rifle was intentional,
a charge similar to No. 14 can be added as an alternative in the same charge-sheet.

No. 13.

CHARGE-SHEET.

Sec. 6 (1k). The accused, No. , Private , Battalion, Regiment,
a soldier of the Regular Forces, is charged with—
When a soldier acting as sentinel [on active service] sleeping on his post,
in that he, at , on , between 1 and 2 a.m. when sentry on
No. Post Guard was asleep.

No. 14.

CHARGE-SHEET.

Sec. 6 (2a). The accused, No. , Private , Battalion, Regiment,
a soldier of the Regular Forces, is charged with—
By discharging fire-arms, negligently occasioning false alarms in camp,
in that he, when encamped with , at , on
by negligently discharging his rifle at about midnight, occasioned a false
alarm in the said camp.

No. 15.

CHARGE-SHEET.

The accused, No. , Serjeant , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—
Causing a mutiny in forces belonging to His Majesty's Regular Forces,
in that he, at , on , in his Barrack Room addressed
Serjeant , Private , and other soldiers,
Regiment, there assembled, in mutinous language, by advising them not to
turn out at Commanding Officer's Parade at 10 o'clock next day in
consequence of which language they, the said Serjeant
and Private , and other soldiers of the said Battalion, did
not turn out for the said parade.
Endeavouring to persuade persons in His Majesty's Regular Forces to join in
a mutiny,
in that he, at , on , stated in the first charge
endeavoured to persuade Lance-Corporal , Battalion,
Regiment, to join in a mutiny, and not to mount guard, for which duty he,
the said Lance-Corporal, had been duly warned.

First charge.
Sec. 7 (1).

Second charge.
Sec. 7 (2b).

No. 16.

(Joint Trial.)

CHARGE-SHEET.

Sec. 7 (3a). The accused persons, No. , Private, , Battalion,
Regiment, and No. , Private , Battalion,
Regiment, soldiers of the Regular Forces, are charged with—

Joining in a mutiny in forces belonging to His Majesty's Regular Forces,
 in that they, at _____, on [or about] _____ joined in a mutiny by
 combining among themselves [and with other soldiers of the _____]
 to resist and offer violence to their superior officers in the execution of their
 duty.

Notes.—This charge is equally applicable to the case where a single person is charged.

No. 17.

CHARGE-SHEET.

The accused, No. _____, Bombardier _____, Battery, Royal Field Sec. 7 (4).
 Artillery, a soldier of the Regular Forces, is charged with—

After coming to the knowledge of an intended mutiny in forces belonging to His Majesty's Regular Forces, failing to inform without delay his commanding officer of the same,
 in that he, at _____, on _____, was present in the public-house known
 as the Red Lion, where Bombardier _____, Gunner _____,
 and other soldiers of _____ Battery, Royal Field Artillery were assembled,
 and, in his hearing, agreed to cut up and destroy the harness belonging to
 the said Battery, and failed to inform his commanding officer thereof.

No. 18.

CHARGE-SHEET.

The accused, No. _____, Private _____, Battalion, _____, Sec. 8 (1).
 Regiment, a soldier of the Regular Forces is charged with—
Striking his superior officer, being in the execution of his office,
 in that he, at _____, on _____, struck with his fist in the face
 Corporal _____, _____ Regiment, who was at the time
 in command of an escort taking soldiers in custody to the guard-room.

No. 19.

CHARGE-SHEET.

The accused, No. _____, Private _____, Battalion, _____, Sec. 2 (2a).
 Regiment, a soldier of the Regular Forces, is charged with—
[When on active service] offering violence to his superior officer, in that he
 at _____, on _____, when checked by Corporal _____
 Regiment, attempted to strike the said corporal.

No. 20.

CHARGE-SHEET.

The accused, No. _____, Private _____, Battalion, _____, Sec. 8 (2b).
 Regiment, a soldier of the Regular Forces, is charged with—
[When on active service] using threatening language to his superior officer,
 in that he, at _____, on _____, after having been
 awarded a punishment by his commanding officer, said to Sergeant
 _____, Regiment, "I'll be revenged on you for this, yet."

No. 21.

CHARGE-SHEET.

The accused, No. _____, Private _____, Battalion, _____, Sec. 9 (1).
 Regiment, a soldier of the Regular Forces, is charged with—
Disobeying in such manner as to show a wilful defiance of authority, a lawful command given personally by his superior officer, in the execution of his office,
 in that he, at _____, on _____, when personally ordered by
 Captain _____, _____ Regiment, upon commanding
 officer's parade, to take up his rifle and fall in, did not do so, divesting
 himself at the same time of his waist belt, and saying, "I'll soldier no more,
 you may do what you please."

No. 22.

CHARGE-SHEET.

- Sec. 9 (2). The accused, No. , Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—
[When on active service] disobeying a lawful command given by his
superior officer,
in that he, at , on did not leave the canteen when
ordered to do so, by Corporal , Regiment.

No. 23.

CHARGE-SHEET.

- Sec. 10 (1). The accused, Captain , Battalion, Regiment, an
officer of the Regular Forces, is charged with—
When concerned in a quarrel, refusing to obey an officer who ordered him into
arrest,
in that he, on , in the ante-room of the officers' mess
at , after having quarrelled with and struck Lieutenant
Regiment, on being ordered into arrest
by Lieutenant Regiment, refused
to obey the order.

No. 24.

CHARGE-SHEET.

- Sec. 10 (2). The accused, No. , Corporal , Dragoons, a soldier
of the Regular Forces, is charged with—
Striking a person in whose custody he was placed,
in that he, at , on , when placed by Serjeant A. R.,
9th Dragoons, in the custody of Police Constable , struck
with his waist-belt, on the head, the said Police Constable.

No. 24A.

CHARGE-SHEET.

- Sec. 10 (3). The accused, No. , Private , Battalion. Regiment,
a soldier of the Regular Forces, is charged with—
Resisting an escort whose duty it was to have him in charge,
in that he, at , on , while under escort of Private
and Private Battalion, Regiment
resisted the escort by kicking and struggling.

No. 25.

CHARGE-SHEET.

- Sec. 10 (4). The accused, No. , Drummer , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—
Breaking out of Barracks,
in that he, at , on , broke out of barracks, when his duty
required him to be in barracks.

N.B.—If the soldier was confined to barracks by any special duty the
duty should be specified, e.g. "when a defaulter," or "when under open
arrest."

No. 26.

CHARGE-SHEET.

- Sec. 11. The accused, No. , Serjeant Hussars, a soldier
of the Regular Forces, is charged with—
Neglecting to obey camp orders,
in that he, at , on bathed in the river , above
camp, contrary to a camp order directing all persons to abstain from bathing
in that part of the river.

No. 27.

CHARGE-SHEET.

The accused, William Robinson, being a person subject to military law as Sec. 11. an officer by reason of his accompanying His Majesty's Forces on active service in [Afghanistan,] and holding a pass entitling him to be treated on the footing of an officer, is charged with—

Neglecting to obey camp orders,
in that he, on _____, entered the village of _____, contrary to a camp order directing all persons to abstain from entering that village.

No. 28.

CHARGE-SHEET.

The accused, No. _____, Private _____, Battalion, _____, Sec. 12 (1a).
Regiment, a soldier of the Regular Forces, is charged with—
[When on active service] deserting His Majesty's Service,
in that he, at _____, on _____, absented himself
from _____ Regiment, until apprehended at _____
on _____ by the civil power, as a stowaway on board the
steamer _____, which was about to leave the harbour
for _____.

No. 29.

CHARGE-SHEET.

The accused, No. _____, Private _____, Battalion, _____, Sec. 12 (1a).
Regiment, a soldier of the Regular Forces, is charged with—
[When on active service] attempting to desert His Majesty's Service,
in that he, at _____, on _____, absented himself from his battalion
and concealed himself in a back room of a house situate in _____,
and when apprehended by the military police on the same day was partly
dressed in plain clothes.

Note.—In the two preceding charges, if the soldier was under orders for active service, the charge will be the same, with the substitution of "under orders for active service" for "on active service."

No. 30.

CHARGE-SHEET.

The accused, No. _____, Private _____, Battalion, _____, Sec. 12 (1a).
Regiment, a soldier of the Regular Forces, is charged with—
Deserting His Majesty's Service,
in that he, at _____, on _____, absented himself
from _____ Regiment, until apprehended by the civil
power at _____, on _____ [where he was in civil employment,
and dressed in plain clothes].

No. 31.

CHARGE-SHEET.

The accused, No. _____, Private _____, Dragoons, Sec. 12 (1a).
a soldier of the Regular Forces, is charged with—
[When under orders for active service]
Deserting His Majesty's Service,
in that he, at _____, on _____, when under orders for embarkation
for active service, absented himself without leave from the
Regiment, from the _____ of _____ until
the _____ of _____ with intent to avoid such embarkation.

No. 32.

CHARGE-SHEET.

The accused, No. _____, Private _____, Battalion, _____, Sec. 13 (1).
Regiment, a soldier of the Regular Forces, is charged with—
Fraudulent enlistment,
in that he, at _____, on _____, when belonging to
the _____ Regiment, without having fulfilled the conditions
enabling him to enlist, enlisted into His Majesty's Regular Forces for general
service [or for service in the _____ regiment], thereby obtaining a
free kit, value _____.

No. 32A.

CHARGE-SHEET.

Sec. 13 (1). The accused, No. , Private , of the
Battalion, Regiment, a soldier of the territorial force when embodied, is
charged with—

Fraudulent enlistment,
in that he, at , on , when belonging to the territorial
force called out on embodiment, without having fulfilled the conditions
enabling him to enlist, enlisted into His Majesty's regular forces for service
in the Regiment, thereby obtaining a free kit, value

No. 33.

CHARGE-SHEET.

Sec. 14 (1). The accused, No. , Private , Dragoons, a soldier
of the Regular Forces, is charged with—
assisting a person subject to Military Law to desert His Majesty's Service,
in that he, at , on [or about] , well knowing that
Private , Regiment, was about to desert,
provided him with a suit of plain clothes.

No. 34.

CHARGE-SHEET.

Sec. 15 (1a). The accused, No. , Private , Lancers, a soldier
of the Regular Forces, is charged with—
Absenting himself without leave,
in that he, at , absented himself without leave from
tattoo roll call on till 7.30 a.m. on

No. 35.

CHARGE-SHEET.

First charge. The accused, No. , Private , Battalion,
Regiment, a special reservist out for training, is charged with—
Sec. 15 (1a). *Absenting himself without leave,*
in that he, at , when his battalion was out for training absented
himself at 9 a.m. on till 11.15 a.m. on
Second charge. *Losing by neglect his equipment and regimental necessaries.*
in that he, at , on or about , was deficient of one
waist belt value four shillings and tenpence, one pair of socks value eight-
pence, one shirt value four shillings, and one razor and case value fivepence.
Sec. 24 (2).

Note.—All articles of clothing and necessaries issued to a special reservist
are the property of the public. The value of such articles should therefore
be given in the charge, and stoppages should form part of the sentence.

No. 36.

CHARGE-SHEET.

Sec. 15 (2). The accused, No. , Gunner , Battery, Royal Field
Artillery, a soldier of the Regular Forces, is charged with—
*Failing to appear at the place of rendezvous appointed by his commanding
officer,*
in that he, at , on , when in billet
at that place, failed to appear at the market square in that town at a.m.,
the place of rendezvous duly appointed by , his commanding officer.

Note.—When the charge is laid under this sub-section it is necessary to
prove that the place of parade specified in the particulars is the place
appointed by the C.O., and that the hour of such parade has also been so
appointed.

No. 37.

CHARGE-SHEET.

The accused, No. , Bugler , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—
*When in camp being found beyond the limits fixed by Regimental Orders
without a pass or written leave from his commanding officer,*
in that he, when encamped near Exeter, was found on , in
Topsham, a place beyond the limits fixed by regimental orders, without a
pass or written leave from his commanding officer.

No. 38.

CHARGE-SHEET.

The accused, Lieutenant , Regiment, an officer of the Sec. 16.
Regular Forces, is charged with—

Behaving in a scandalous manner unbecoming the character of an officer and a gentleman,
in that he, at , on , in payment of his mess account, gave Mr. , the mess man, a cheque for £31 on Messrs. Cox and Co., Army Agents, well knowing that he had not sufficient funds in the hands of the said Agents to meet the said cheque, and having no reasonable grounds for supposing that the aforesaid cheque would be honoured when presented.

No. 39.

CHARGE-SHEET.

The accused, Captain , Regiment, an officer of the Sec. 16.
Regular Forces, is charged with—

Behaving in a scandalous manner unbecoming the character of an officer and a gentleman,
in that he, at , on , [or between and], wrote and sent to his commanding officer, Lieut-Colonel , Regiment, an anonymous letter in which he made use of the following words:—

“By stopping leave and overworking your officers and men, you make the Regiment a hell upon earth. Your tyrannical conduct is a matter of general remark, and you may rely on it, unless you change, complaints will be made against you at the next General's Inspection.”

No. 40.

CHARGE-SHEET.

The accused, Captain , Battalion, Regiment, Sec. 17 (a).
an officer of the Regular Forces, is charged with—

When concerned in the care of regimental money, embezzling the same,
in that he, at , on or about , when as President of the Officers' Mess, Battalion, Regiment, he was concerned in the care of regimental money, having received a cheque for the sum of £15 (fifteen pounds), which it was his duty to place to the credit of the Bank Account of the Officers' Mess, Battalion, Regiment, applied the said sum of £15 (fifteen pounds) to his own use, with intent to defraud.

Note.—The particulars should state the acts which are alleged to have been done by the accused and to amount to embezzlement.

No. 41.

CHARGE-SHEET.

The accused, Quartermaster and Honorary Captain , Royal Army Sec. 17 (a).
Medical Corps, an officer of the Regular Forces, is charged with—

When charged with the care of public goods, fraudulently misapplying the same,
in that he, at , on [or about] , when charged with the care of ten rugs for hospital use, value or thereabout, sold the said rugs to for shillings, with intent to defraud.

No. 42.

CHARGE-SHEET.

The accused, No. , Corporal , Army Ordnance Corps, a Sec. 17 (a).
soldier of the Regular Forces, is charged with—

When concerned in the care of public goods, stealing the same,
in that he, at , on [or about] , when employed in the care of Ordnance Stores, stole three Webley pistols value twenty-eight shillings each, part of the said stores.

No. 43.

CHARGE-SHEET.

- Sec. 17 (a). The accused, No. , Staff Serjeant
Army Service Corps, a soldier of the Regular Forces, is charged with—
When concerned in the distribution of public goods, fraudulently misapplying the same,
in that he, at , on , when concerned in the
distribution of coals to . Battalion, Regiment,
issued four sacks thereof, weighing two cwt. each or thereabout, of a total
value of , or thereabout, to , a person not
entitled to receive them, with intent to defraud.

No. 44.

CHARGE-SHEET.

- Sec. 18 (1a). The accused, No. , Private , Battalion,
Regiment a soldier of the Regular Forces, is charged with—
Malingering.
in that he, at , on , [between
and], with the intention of evading his duties as a soldier,
counterfeited dumbness.

No. 45.

CHARGE-SHEET.

- Sec. 18 (1b). The accused, No. , Private , Hussars, a soldier of
the Regular Forces, is charged with—
Feigning disease,
in that he, at , on , pretended to the Medical Officer
in charge of troops that he was suffering from loss of speech, whereas he was
not so suffering.

No. 46.

CHARGE-SHEET

- Sec. 18 (2a). The accused, No. , Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—
Wilfully maiming himself with intent thereby to render himself unfit for service,
in that he, at , on , when sentry on No.
Post Guard, by discharging his rifle wilfully, blew off the fore and
middle finger of his right hand.

No. 47.

CHARGE-SHEET.

- Sec. 18 (3). The accused, No. , Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—
Being wilfully guilty of misconduct by means of which misconduct he delayed the cure of disease,
in that he, at , on , [between
and], when under medical treatment for syphilitic sores,
tampered with the said sores by the secret application of .

No. 48.

CHARGE-SHEET.

- Sec. 18 (3). The accused, No. , Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—
Wilfully disobeying orders by means of which disobedience he delayed the cure of his disease [or infirmity],
in that he, at , on , when under medical treatment for
ophthalmia refused to submit to the treatment, viz., the application of lotion,
deemed advisable to effect his cure, and as such ordered by
in medical charge of the accused.

No. 49.

CHARGE-SHEET.

Sec. 18 (4a).

The accused, No. , Private (Lance-Corporal)
 Hussars, a soldier of the Regular Forces, is charged with—
Stealing public money,
 in that he, at , on , when entrusted by Staff-Serjeant-Major with five sovereigns, public money, in a sealed envelope, for the purpose of handing them to Captain applied the same to his own use.

No. 50.

CHARGE-SHEET.

First
 charge.
 Sec. 18 (4a).

The accused, No. , Private , Battalion,
 Regiment, a soldier of the Regular Forces, is charged with—
Stealing goods, the property of a comrade,
 in that he, in the [Cambridge Barracks at Portsmouth], on stole a watch, the property of Charles Williams, a private in the same regiment:

Receiving, knowing them to be stolen, goods, the property of a comrade,
 in that he, at [Portsmouth], at the place and on the day aforesaid was in possession of a watch stolen from the said Charles Williams, which he knew to have been stolen.
 Second
 charge.
 (Alternative.)
 Sec. 18 (4b)

No. 51.

CHARGE-SHEET.

Sec. 18 (3a)

The accused, No. , Private , Battalion,
 Regiment, a soldier of the Regular Forces, is charged with—
Such an offence of a fraudulent nature as is mentioned in sub-section 5 of Section 18 of the Army Act,
 in that he, at , on [or about] , when employed as an assistant in the regimental canteen, with intent to defraud, added water to a cask of ale belonging to the stores of the said canteen.

No. 52.

CHARGE-SHEET.

Sec. 19.

The accused, No. , Drummer , Battalion,
 Regiment, a soldier of the Regular Forces, is charged with—
[When on active service] Drunkenness
 in that he, at , on , [when on duty (specify duty) or having been previously warned for duty (specify duty)] was drunk.

Note.—If the offender has been warned for special duty, e.g., night picket, or in aid of the civil power, the nature of that special duty should be stated.

In order to enable a court-martial to award field punishment, it is essential to allege "when on active service."

No. 53.

CHARGE-SHEET

Sec. 20 (1).

The accused, No. , Serjeant , Battalion,
 Regiment, a soldier of the Regular Forces, is charged with—
When in command of a picket wilfully releasing, without proper authority, a person committed to his charge,
 in that he, at , on , when in command of a picket patrolling the town, released Private
 Regiment, a person who had been committed to his charge by provost-serjeant

No. 54.

CHARGE-SHEET.

Sec. 20 (1),

The accused, No. , Serjeant , Battalion,
 Regiment, a soldier of the Regular Forces, is charged with—
When in command of a guard releasing, without proper authority, a person committed to his charge,
 in that he, at , on , when in command of the barrack guard, without authority released Corporal
 Battalion, Regiment, a person committed to his charge.

No. 55.

CHARGE-SHEET.

Sec. 20 (2).

The accused, No. , Corporal , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
Wilfully allowing to escape a person committed to his charge,
 in that he, at Liverpool, on , when in command of an escort
 conducting to Dublin Private Battalion,
 Regiment, a person committed to his charge, without valid cause left the
 person and escort, when the said person escaped.

Note.—Upon this charge a court-martial is competent to find the accused guilty of “without reasonable excuse, allowing to escape the person committed to his charge.” Sec. 56 (5) Army Act.

No. 56.

CHARGE-SHEET.

Sec. 20 (2).

The accused, No. , Corporal , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
Without reasonable excuse allowing to escape a person committed to his charge,
 in that he, at , on , when conducting to his
 Battalion, Private Battalion, Regiment,
 a person committed to his charge [allowed a crowd to assemble round the
 said person without taking reasonable means to prevent it, and thus] permitted
 the escape of the said person.

No. 57.

CHARGE-SHEET.

Sec. 22.

The accused, No. , Private , Dragoon Guards, a
 soldier of the Regular Forces, is charged with—
When in confinement escaping,
 in that he, at , on , when in confinement
 (in the detention barrack) at , escaped.

No. 58.

CHARGE-SHEET.

Sec. 22.

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
When in lawful custody attempting to escape,
 in that he, at , on , when proceeding under
 escort to , broke away from his escort and attempted to
 escape.

No. 59.

CHARGE-SHEET.

First
charge.

Sec. 24 (1).

Second
charge.
(Alternative.)

Sec. 24 (2).

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
Making away with by pawning his clothing and regimental necessaries,
 in that he, at , on [or about] , pawned to ,
 for the sum of five shillings, one pair of ankle boots and two brushes, and
 one flannel shirt, articles of his clothing, and regimental necessaries.
Losing by neglect his clothing and regimental necessaries,
 in that he, at the place and on [or about] the day aforesaid, was deficient
 of the articles of his clothing and regimental necessaries specified in the first
 charge.

Note.—If the accused sold his clothing, &c., this same charge can be used with the substitution of “selling” for “pawning.”
 The second charge should only be added where there is any doubt about the proof of the pawning or selling being sufficient.

No. 60.

CHARGE-SHEET.

Sec. 24 (2).

The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
Losing by neglect his equipments, clothing, and regimental necessaries,
 in that he, at , on [or about] , was deficient of one
 waist-belt, value , one serge frock, two towels,
 and two pairs of socks.

No. 61.

CHARGE-SHEET.

The accused, No. , Company Quartermaster-Serjeant
Battalion, Regiment, a soldier of the Regular Forces, is charged
with—

Sec. 25 (1).

In a document signed by him knowingly making a fraudulent statement,
in that he, at , on [or about] , [between
and], in his capacity as Company Quartermaster-Serjeant of
company, Regiment, fraudulently entered in his cash account for
the month of , 19 , the following item—Washing bills, three pounds
four shillings and two pence, whereas the actual amount paid by him in
respect of such bills was two pounds fifteen shillings and four pence.

No. 62.

CHARGE-SHEET.

The accused, No. , Company Quartermaster-Serjeant
Battalion, Regiment, a soldier of the Regular Forces, is charged
with—

Sec. 25 (2).

*Knowingly and with intent to defraud, altering a document which it was his
duty to preserve,*
in that he, at , on [or about] [between
and], in the Military Savings Bank Form No. 2, statement of deposits
and withdrawals for the month of , 19 , altered, with intent to
defraud, the figure £2 sterling, representing a withdrawal made by
Private , Regiment, and changed it into £3 sterling.

Note.—The name of the person whom the accused intended to defraud should be
stated where possible.

No. 63.

CHARGE-SHEET.

The accused, No. , Company Quartermaster-Serjeant
Battalion, Regiment, a soldier of the Regular Forces, is charged
with—

Sec. 25 (2).

*Knowingly and with intent to defraud making away with a document which it
was his duty to preserve,*
in that he, at , on [or about] , with intent to defraud,
burned the pay sheet of A Company, Regiment, for the month
of , 19 .

No. 64.

CHARGE-SHEET.

The accused, No. , Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—

Sec. 27 (1).

*Making a false accusation against a soldier knowing such accusation to be
false,*
in that he, at , on , when appearing before
Captain , Regiment, to answer for a minor
offence, used language to the effect following, that is to say: "The Com-
pany Serjeant-Major is not fair in taking men for duty, and no one in the
company can get on if he does not give him a bribe," meaning thereby the
Company Serjeant-Major of his company, Regiment, well
knowing the said statement to be false.

No. 65.

CHARGE-SHEET.

The accused, No. , Private
the Regular Forces, is charged with—

Dragoons, a soldier of Sec. 27 (3).

Falsely stating to his commanding officer that he had been guilty of desertion,
in that he, at , on , stated to , his
commanding officer, that he was a deserter from , well
knowing such statement to be false.

No. 66.

CHARGE-SHEET.

- Sec. 29. The accused, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
Wilfully giving false evidence when examined on oath before a court-martial,
 in that he, at , on , when examined as a witness
 before a court-martial, stated on oath, that Private
 Regiment, the person charged before the said court, was in his, the witness's,
 company in his barrack-room, at , between 4 and 5 p.m.
 on , well knowing such statement to be false.

No. 67.

CHARGE-SHEET.

- Sec. 30 (3). The accused, No. , Squadron Quartermaster-Serjeant
 Regiment, a soldier of the Regular Forces, is charged with—
Failing to comply with the provisions of the Army Act, with respect to
the payment of the just demands of a person on whom soldiers under his command
and their horses had been billeted,
 in that he, at on , having himself with his horse,
 and three soldiers Regiment, with their horses, been billeted on
 Mr. , a keeper of a victualling house, failed to pay the said
 Mr. , the sum of due to him for the said billets.

No. 68.

CHARGE-SHEET.

- Sec. 32. The accused, No. , Private , Battalion,
 Regiment, a soldier of the Regular Forces, is charged with—
After having been discharged with disgrace from a part [parts] of His
Majesty's Forces, enlisting in the Regular Forces without declaring the circum-
stances of his discharge [discharges],
 in that he, at , on , after having been discharged with
 ignominy from , [for misconduct from
 and on conviction for felony from], enlisted in His Majesty's
 Regular Forces for general service [for service in the Regiment],
 without declaring the circumstances of his discharge [discharges].

No. 69.

CHARGE-SHEET.

- Sec. 33. The accused, No. , Private , Battalion,
 Regiment, a soldier of the Regular Forces, is charged with—
Making a wilfully false answer to a question set forth in the attestation
paper which was put to him by or by direction of the justice before whom he
appeared for the purpose of being attested,
 in that he, at , on , when he appeared before A.B. |
 a Justice of the Peace [or recruiting staff officer], for the purpose of being
 attested for general service [or for service in the Regiment]—
 to the question put to him, Have you ever served in the Army? answered, |
 "No"; whereas, he had served, as he well knew, in the Regiment.

No. 70.

CHARGE-SHEET.

- Sec. 33. The accused, No. , Private , Battalion,
 Regiment, a soldier of the Regular Forces, is charged with—
Making a wilfully false answer to a question set forth in the attestation
paper which was put to him by or by direction of the justice before whom he
appeared for the purpose of being attested,
 in that he, at , on , when he appeared before
 A.B., a Justice of the Peace, [or recruiting staff officer] for the purpose of
 being attested for general service [or for service in the
 Regiment]—to the question put to him, Do you now belong to the Royal Navy?
 answered "No"; whereas, he was serving, as he well knew, in
 H.M.S. " ".

No. 70A.

CHARGE-SHEET

The accused, No. , Private ,
Battalion, Regiment, a special reservist, out for training, is charged with— Sec. 33.

Making a wilfully false answer to a question set forth in the attestation paper which was put to him by or by direction of the justice before whom he appeared for the purpose of being attested,
in that he, at , on , when belonging to the special reserve, when he appeared before A.B., a Justice of the Peace, [or recruiting staff officer] for the purpose of being attested for the special reserve, to the question put to him, "Do you now belong to the special reserve?" answered "No"; whereas he belonged, as he well knew, to the Battalion, Regiment.

Note.—If the reservist is not subject to military law when the charge is preferred against him he should not be charged under this section, but should be dealt with in a Civil Court under A.A. 99, and s. 18 (1) Reserve Forces Act 1882.

No. 70B.

CHARGE-SHEET.

The accused, No. Private , Battalion, Regiment, a soldier of the Regular Forces is charged with— Sec. 33.

Making a wilfully false answer to a question set forth in the attestation paper which was put to him by or by direction of the justice before whom he appeared for the purpose of being attested,
in that he, at , on , when he appeared before A.B., a Justice of the Peace, [or recruiting staff officer] for the purpose of being attested for general service [or for service in the Regiment], to the question put to him, "Do you now belong to the Army Reserve?" answered "No"; whereas he belonged to the Army Reserve Regiment, and by his enlistment obtained a free kit, value

Note.—The words "and by his enlistment obtained a free kit, value " will be added to the charge in all cases where the trial commences within three months of the date of the improper enlistment, but not otherwise.

No. 71.

CHARGE-SHEET.

The accused, No. , Gunner , Company, Royal Garrison Artillery, a soldier of the Regular Forces, is charged with— Sec. 38 (2).
Attempting to commit suicide,
in that he, at , on , with intent to commit suicide, out his throat with a razor.

No. 72.

CHARGE-SHEET.

The accused, No. Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 40.
An act to the prejudice of good order and military discipline,
in that he, at , on , when sentry over soldiers in custody while employed on fatigue duty in the barrack yard, surreptitiously gave to No. , Private , Regiment, one of the said soldiers in custody, a pipe and some tobacco.

No. 73.

CHARGE-SHEET.

The accused, No. Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 40.
Conduct to the prejudice of good order and military discipline,
in that he, at , on , on returning as a soldier in custody to the guard-room on remand, said, "What the do I care [being the commanding officer of the accused]. He may go to for me," or words to that effect.

(M.L.)

2 U

No. 74.

CHARGE-SHEET.

- Sec. 40. The accused, No. , Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—
Conduct to the prejudice of good order and military discipline,
in that he, at , on , became unfit for duty, by
reason of previous indulgence in alcoholic stimulants.

No. 75.

CHARGE-SHEET.

- Sec. 40. The accused, No. , Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—
An act to the prejudice of good order and military discipline,
in that he, at , on , made use of, or [was in possession
of], a document purporting to be a genuine pass [to be signed by
well knowing that it was not genuine [so signed].

No. 76.

CHARGE-SHEET.

- Sec. 40. The accused, No. , Corporal , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—
Neglect to the prejudice of good order and military discipline,
in that he, at , on , after being duly warned by Company
[Serjeant-Major to parade the regimental defaulters at 8 p.m. on
t day, neglected to do so.
Note.—This form of charge is applicable when wilful disobedience is not
imputed.

No. 77.

CHARGE-SHEET.

- Sec. 40. The accused, No. , Serjeant , Battalion,
Regiment, a soldier of the Regular Forces is charged with—
Neglect to the prejudice of good order and military discipline,
in that he, at , between and , when in charge of
the recreation room, negligently conducted the supply of refresh-
ments authorised to be issued therein, and through such negligence caused a
loss to that institution of [or thereabout].

No. 78.

CHARGE-SHEET.

- Sec. 41. The accused, No. , Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—
When on active service committing the offence of murder,
in that he, at [Ismaillia,] on [or about] , when on active service,
did feloniously, wilfully, and of malice aforethought kill and murder one
Humantoo, a native of the East Indies, a camp follower.

No. 79.

CHARGE-SHEET.

- Sec. 41. The accused, No. , Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—
Committing a civil offence, that is to say, burglary,
in that he, at , on , at about midnight, forced open
the back door of the dwelling house of , at , and
entered the said dwelling house, with intent to commit a felony [and
feloniously took therefrom two silver candle-sticks value
thereabout].

No. 80.

CHARGE-SHEET.

- Sec. 41. The accused, No. , Private , Battalion,
Regiment, a soldier of the Regular Forces, is charged with—
Committing a civil offence, that is to say, robbery with violence,
in that he, at , on , feloniously assaulted
and took from his person a silver watch and chain, value [or there-
about].

No. 81.

CHARGE-SHEET.

The accused, No. , Private , Battalion, Sec. 41.
 Regiment, a soldier of the Regular Forces, is charged with—
Committing a civil offence, that is to say, stealing, First
 in that he, at , on , [under pretence of making a charge.
 purchase] stole from the shop of , a tobacconist, half a
 pound of tobacco or thereabout, value , belonging to the
 said
 | *Committing a civil offence, that is to say, receiving stolen goods knowing* Second
them to have been stolen, charge.
 in that he, at , on , was in possession of half a (Alterna-
 pound of tobacco or thereabout, value , the property of the tive.)
 said , which he knew to have been stolen.

No. 82.

CHARGE-SHEET.

The accused, No. , Serjeant , Battalion, Sec. 41.
 Regiment, a soldier of the Regular Forces, is charged with—
Committing a civil offence, that is to say, forgery,
 in that he, at , on [or about] , with intent to defraud,
 forged the name of Captain to a post office order for four pounds
 two shillings and sixpence [and thereby obtained the sum of four pounds two
 shillings and sixpence].

No. 83.

CHARGE-SHEET.

The accused, No. , Private , Battalion, Sec. 41.
 Regiment, a soldier of the Regular Forces, is charged with—
Committing a civil offence, that is to say, uttering counterfeit coin,
 in that he, at , on , in a public-house known as
 the Royal Arms, uttered a counterfeit half-crown, knowing the same to be
 counterfeit.

Note.—The offender utters counterfeit coin if he endeavours to pass it in payment
 of goods, &c., though it be not accepted, or if he tries simply to get it changed
 into other money.

No. 84.

CHARGE-SHEET.

The accused, No. , Private , T.R.F. Act.
 Battalion, Regiment, a soldier of the territorial force out for annual s. 11.
 training, is charged with—
After having been discharged with disgrace from a part [parts] of His
Majesty's forces, enlisting in the territorial force without declaring the
circumstances of his discharge [discharges],
 in that he, at , on , after having been discharged with
 ignominy [for misconduct, &c.] from the Regiment,
 enlisted in the territorial force for service in the Regiment of
 , without declaring the circumstances of his discharge.

No. 85.

CHARGE-SHEET.

The accused, [name], belonging to the Army Reserve, is charged with— Reserve
Using insulting language to a non-commissioned officer acting in the execution Forces
of his office, and who would be his superior officer if the accused were subject to Act 1882,
military law, sec. 4.
 in that he, at , on , when receiving his pay from
 , Company Quartermaster-Serjeant Regiment, said
 to him, "You are a cheat," or words to that effect

(M.L.)

2 U 2

No. 86.

CHARGE-SHEET.

Reserve
Forces
Act 1882,
sec. 15 (1) (b)

The accused, No. , Private
Battalion, Regiment, a special reservist, is charged with—
Absenting himself without leave,

in that he, at , on , without leave lawfully granted, or
reasonable excuse, failed to appear for the annual training of his battalion,
and remained absent until apprehended by the civil power at
on

No. 87.

CHARGE-SHEET.

Reserve
Forces
Act 1882,
sec. 15.

The accused, [name], belonging to the Army Reserve called out for
annual training, is charged with—

Absenting himself without leave,

in that he, at , on , the place and time appointed
for him to attend, without leave lawfully granted or reasonable excuse,
failed to appear.

Note.—In charges preferred against non-commissioned officers and men belonging to the Special Reserve or Territorial Force under Sections 8 (1), 8 (2a), 8 (2b), 9 (1), and 9 (2), it is necessary to show in the statement of the offence and of the particulars, not only that the accused was himself subject to military law at the time the offence is alleged to have been committed, but also that the "superior officer" referred to in the charge, if belonging to the Special Reserve or Territorial Force, was subject to military law at the time.

Similarly, in charges framed under Sections 18 (4a), 18 (4b), 24 (4), 27 (1), 27 (2), 37 (1), and 39, the particulars of such charges should show that the "comrade" or "soldier" referred to therein, if belonging to the Special Reserve or Territorial Force, was subject to military law at the time the offence was committed.

Example.

Charge-sheet.

The accused, No. , Private
Battalion, Regiment, a Special Reservist [a soldier of the Territorial
Force] out for training [or otherwise subject to military law], is charged with—
A. A.
Sec. 8 (3a).

Offering violence to his superior officer,

in that he, at , on , when checked by Serjeant
Battalion, Regiment, who was at the time out for training [or otherwise
subject to military law], attempted to strike the said serjeant.

SECOND APPENDIX.

App. II

FORMS AS TO COURTS-MARTIAL.

FORMS FOR ASSEMBLY OF COURTS-MARTIAL.

No. 1.—General or District.

Form of Order for the Assembly of a General or District Court-Martial.

ORDERS BY _____ commanding the
(Place, date.)

The detail of officers as mentioned below will assemble at _____ on the _____ day of _____ for the purpose of trying by a court-martial the accused person [persons] named in the margin [and such other person or persons as may be brought before them].*

PRESIDENT.

is appointed president.†

MEMBERS.

WAITING MEMBERS.

JUDGE-ADVOCATE.

has been [or where the convening officer has the appointment of a judge-advocate, is hereby] appointed judge-advocate.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to

Signed this _____ day of _____

A B.

Note.—
The president must be named. The members and the waiting members may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named.

* Any opinion of the convening officer with respect to the composition of the Court (see Rules of Procedure 20 and 21) should be added here, thus:

"In the opinion of the convening officer, officers of different corps are not, having due regard to the public service, available," or as the case may be.

† Add here, if the President is under the rank of field officer, and the officer convening the Court is not under that rank, "In the opinion of the convening officer a field officer is not, having due regard to the public service, available." In the case of a District Court-Martial, if the president is under the rank of captain, add, "In the opinion of the convening officer a captain is not, having due regard to the public service, available."

‡ The "unit," in the case of Royal Horse or Royal Field Artillery, is a Brigade.

App. II.

No. 2.—Regimental.

Form of Order for the Assembly of a Regimental Court-Martial.

orders by _____ commanding
(Place, date.)

The officers mentioned below will assemble at _____
on _____ for the purpose of trying by regimental court-martial
the accused person [persons] named in the margin [and such other
person or persons as may be brought before them].

PRESIDENT.

is appointed president. ¶

MEMBERS.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to

Signed this _____ day of _____

A.B.

¶ If the president is under the rank of captain, after the words "appointed president," add "the court-martial being held on the "line of march," or "the court-martial being held on board the _____, a ship* commissioned by His Majesty," or "in the opinion of the convening officer a captain is not, having due regard to the public service, available."

* If the ship is not His Majesty's ship insert "not."

No. 3.—Field General.

[See *Form of Proceedings*, p. 700.]

No. 4.—Declaration for Suspension of Rules.

Form of Declaration of Military Exigencies or the Necessities of Discipline under Rule of Procedure 104.

for the ne-
cessities of
discipline.]
[or in-
expedient.]
State the
rule or rules
which
cannot be
observed.
(See Rule
104).

In my opinion [*military exigencies, namely (state them)] render
it [†impossible] to observe the provisions of rules‡
on the trial of _____ by _____ court-martial assembled
pursuant to the order of the _____ of _____
Signed at _____ this _____ day of _____

A.B.

[Instruction.—This declaration must be signed by the officer whose opinion is given, and will be annexed to the proceedings.]

App. II.

Army Form
A. 9.

FORM OF PROCEEDINGS OF COURTS-MARTIAL

Form of Proceedings of a General Court-Martial (including some of the incidents which may occur to vary the ordinary course of procedure), with Instructions for the guidance of the Court.

PROCEEDINGS OF A GENERAL COURT-MARTIAL, held at
on the _____ day of _____ 19____ by order of
Commanding _____ dated the
day of _____ 19____.

PRESIDENT.

Rank.	Name.	Regiment.
_____	_____	_____

MEMBERS.

Rank.	Name.	Regiment.
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____, Judge-Advocate.

At _____ Trial of*
o'clock the trial commences.

* Here
insert No.,
Rank,
Name and
Regiment,
and appoint-
ment (if
any).

N.B.—The proper Army Forms, to be obtained from Convening Officers, will be used in accordance with the instructions.

The same Form will be used for district courts-martial, and will apply as nearly as may be, with the substitution of "district" for "general," and with the omission, where there is no Judge-Advocate, of all reference to the Judge-Advocate.

For regimental courts-martial Army Form A. 9. will also be used, with the substitution of "regimental" for "general," and with the omission of all reference to the Judge-Advocate.

(1.) The order convening the Court is read, and [a copy thereof] is marked _____, signed by the president, and attached to the proceedings.

The charge-sheet and the summary [or abstract] of evidence are laid before the Court.

[Instruction.—All documents relating to the Court, or the matters before it, which are intended to form part of the proceedings (such as an order respecting military exigencies, or a letter answering any question referred to the convening officer) at whatever period of the trial they are received should be read in open Court, marked so as to identify them, signed by the president, and attached to the proceedings.]

Note:—Before certifying that the Court have satisfied themselves as provided by Rules 22 and 23, the President will, in every case where a Court of Inquiry has been held respecting a matter upon which a charge against the accused is founded, insert an asterisk after the words "Rules of Procedure 22 and 23," and enter in red ink and sign a footnote at the bottom of the first page of the proceedings, to the following effect:—

"I have compared the names of the officers who served upon the Court of Inquiry respecting the matter on which the _____ (first) charge against the accused has been founded, with those of the officers detailed to serve on this Court-Martial.

"(Signature of President.)"

** Here insert reason.
 § Here insert Rank, Name and Regiment.
 † Here state Rank and Name, and Regiment (if any).

The Court satisfy themselves that is not available to
 serve owing to**
 § waiting member takes his place as a member of the court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

(2.)†
 appears as prosecutor, and takes his place.
 The above-named, the accused, is brought before the Court.

VARIATION.

‡ Qualification to be stated.

‡ appears as counsel for the prosecutor.
 ‡ appears to assist [or as counsel for] the accused.

The names of the president and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as president, or by any of the officers whose names you have heard read over?

Answer by accused.

No.

[Instruction.—The questions are to be numbered throughout consecutively in a single series. The letters Q. and A. in the margin may stand for Question and Answer respectively.]

VARIATIONS.

CHALLENGING OFFICERS.

Answer.—I object to

Question to Accused.—Do you object to any other person?

(This question must be repeated until all the objections are ascertained.)

Answer.—

[If the president is objected to, that objection will be dealt with first, otherwise, an objection to the junior officer will be disposed of first.]

Objection to the President.

Question to accused.—What is your objection to me as president?

Answer by accused.—

The accused, in support of his objection to the president, requests permission to give evidence himself and [or] to call

&c., &c.

The accused gives evidence himself and [or] is called into Court, and is questioned by the accused.

The Court is closed to consider the objection.

Decision.—The Court disallow the objection.

The Court is re-opened, and the above decision is made known to the accused.

or

Decision.—The Court allow the objection.

The Court is re-opened, and the above decision is made known to the accused, and the Court adjourn.

Objection to Member.

Question to accused.—What is your objection to (the junior officer objected to)?

Answer by accused.—

The accused in support of his objection to , requests permission to give evidence himself and [or] to call

&c., &c.

The accused gives evidence himself and [or] is called into Court, and is questioned by the accused

The Court is closed to consider the objection.

Decision.—The Court disallow the objection.

The Court is re-opened, and the above decision is made known to the accused. App. 11.

or,

Decision.—The Court allow the objection.

The Court is re-opened, and the above decision is made known to the accused.

retires.

Fresh Member.— takes his place as a member of the Court.

(*This only applies where there are waiting members of the court otherwise the court must adjourn.*)

He appears to the Court to be eligible and not disqualified to serve on this Court-Martial.

Question to accused.—Do you object to be tried by (the fresh member)?

Accused.—

(If he objects, the objection will be dealt with in the former manner as the former objection.)

Question to accused.—What is your objection to (the junior of the officers objected to)?

(This objection will be dealt with in the same manner as the former objection.)

The Court adjourn for the purpose of fresh members being appointed.

or,

The Court is of opinion that, in the interests of justice, and for the good of the service, it is inexpedient to adjourn for the purpose of fresh members being appointed, because [here state the reasons].

At o'clock on the court resumed their proceedings, and an Order appointing another president [or, fresh officers] is read, marked and attached to the proceedings.

The Court satisfy themselves with respect to such president [or officers] as provided by Rule of Procedure 22.

[Instruction.—The procedure as to challenging a new president and fresh officers, and the procedure, if any objection is allowed, will be the same as above.]

The president and members of the Court, as constituted after the above proceedings, are as follows:—

PRESIDENT.		
Rank.	Name.	Regiment.
_____	_____	_____
MEMBERS.		
Rank.	Name.	Regiment.
_____	_____	_____
_____	_____	_____
_____	_____	_____

The President, Members, and Judge-Advocate are duly sworn (also any officer under instruction).

[Instruction.—1. The witnesses if in Court, other than the prosecutor and the accused, should be ordered out of the Court at this stage of the proceedings.

2. Also any interpreter and short-hand writer should be now sworn.]

Do you object to _____ as interpreter?

Question to accused

A.

[Instruction.—In case of objection the same procedure will be followed as in the case of an objection to a member of the Court.]

Q. Do you object to as short-hand writer?
A.

[Instruction.—In case of objection the same procedure will be followed as in the case of an objection to a member of the Court.]

CHARGE-SHEET.

Charge sheet.

(8.) The charge-sheet is signed by the president, marked and annexed to the proceedings.

VARIATION.

If the accused has elected to be tried instead of being dealt with summarily by his commanding officer.

The prosecutor informs the Court that the accused has elected to be tried by this Court instead of being dealt with summarily by his commanding officer.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Question to accused.

Are you guilty or not guilty of the [first] charge against you, which you have heard read?

A.

[Instruction.—Where there is more than one charge the foregoing question will be asked after each charge is read, the number of the charge being stated.]

[Instruction.—If the accused pleads guilty to any charge, the provisions of Rule 35 (B) must be complied with, and the fact that they have been complied with must be recorded. Where there are alternative charges and the accused pleads guilty to the less serious charge the court, if they decide to proceed upon the more serious charge, will enter after the plea as recorded: "The Court proceed as though the accused had not pleaded guilty to any charge."]

VARIATIONS.

Question to accused.

The accused objects to the charge.
What is your objection?

A.

Decision.

The Court is closed to consider their decision.
The Court disallow the objection [or, the Court allow the objection, and agree to report to the convening officer].
The Court is re-opened, and the above decision is read to the accused.
The Court proceed to the trial [or adjourn].
The accused pleads to the general jurisdiction of the Court.
What are the grounds of your plea?

Plea to jurisdiction.
Question to accused.

A.

Q.

Do you wish to give evidence yourself or produce any evidence in support of your plea?

A.

Witnesses.

Witness is examined on oath.
[Instruction.—The examination, &c., of the accused, if he wishes to give evidence, and of the witnesses called by the accused and of any witnesses called by the prosecutor in reply, will proceed as directed below in paragraphs (6) and (7). The prosecutor will be entitled to reply after all the evidence is given.]

Decision.

The Court is closed to consider their decision.
The Court allow [or overrule] the plea [or resolve to refer the point to the convening authority, or decide specially that].
The Court is re-opened, and the above decision is read to the accused.
The Court proceed to the trial [or adjourn].

VARIATION.

Accused, besides the plea of guilty [or, not guilty], offers a plea in bar of trial.

Plea in bar of trial. Question to accused.

What are the grounds of your plea?

A.

Do you wish to give evidence yourself or to produce any evidence in support of your plea?

Q.

A.

Witness examined on oath.

Witnesses.

[Instruction.—The examination, &c., of the accused, if he wishes to give evidence, and of the witnesses called by the accused, and of any witnesses called by the prosecutor in reply, will proceed as directed below in paragraphs (6) and (7). The prosecutor will be entitled to reply after all the evidence is given.]

The Court is closed to consider their decision.

Decision.

The Court allow the plea and resolve to adjourn [or to proceed to the trial on another charge] [or the Court overrule the plea].

The Court is re-opened, and the above decision is read to the accused. The Court adjourn [or proceed with the trial on another charge] [or proceed with the trial].

As the accused does not plead intelligibly [or refuses to plead to the above charge, or does not plead guilty to the above charge] the Court enter a plea of "Not guilty."

Refusal to plead.

PROCEEDINGS ON PLEA OF GUILTY.

(4.) The accused [number, rank, name, regiment] is found guilty of the charge [all the charges] or is found guilty of the charge, and is found not guilty of the charge.

[Instruction.—If the trial proceeds upon any charge to which there is a plea of not guilty, the Court will not proceed upon the record of the plea of guilty until after the finding on those other charges; and in that case the court will be re-opened and the charge on which the record is guilty must be read to the accused again.]

The accused may in accordance with Rule 37 (B) make any statement he wishes in reference to the charge.]

The summary of evidence [or abstract of evidence] is read, marked, signed by the president, and attached to the proceedings.

[Instruction.—If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence and to enable the confirming officer to know all the circumstances connected with the case will be taken as in paragraph 5. No address will be allowed.]

VARIATION.

The Court being satisfied from the statement of the accused [or the summary of evidence, or otherwise], that the accused did not understand the effect of the plea of "guilty," enters at the foot of page "C" of the proceedings: "The Court consider that the accused does not understand the effect of his plea of 'guilty,' alters the record, and enters a plea of "not guilty."

Evidence as to mitigation of punishment.

[Instruction.—The Court will then proceed in respect of this charge as in paragraph 5.]

Do you wish to make any statement in mitigation of punishment? No.

Question to accused.

A.

or

The accused in mitigation of punishment says [or if the statement is in writing, hands in a written statement, which is read, marked

App. II.

, signed by the president, and attached to the proceedings].

[Instruction.—*If the statement of the accused is not in writing, and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.*

If the statement is not in writing and not delivered by the accused himself the material portions should be recorded.

In either case any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in mitigation of punishment.]

VARIATION

The Court give permission to the accused to give evidence himself and [or] to call witnesses to prove his above statement that [here specify the statement which is to be proved].

[Instruction.—(1.) *The examination, &c., of witnesses called in pursuance of this permission will proceed in the same manner as under paragraph 6.*

(2.) *The procedure as to sentence, recommendation to mercy, and confirmation will be as in paragraphs 12 and 14.]*

Evidence as to character. Question to accused.

Do you wish to give evidence yourself or to call any witnesses as to character.

A.

Yes. [No.]

[Instruction.—(1) *The examination, &c., of witnesses as to character will proceed as in paragraph (6).*

(2) *Evidence as to character and particulars of service will be taken as in paragraph 12.]*

PROCEEDINGS ON PLEA OF NOT GUILTY.

(5.) [If the prosecutor makes an address.] The prosecutor makes the following address, [or, if the address is written, hands in a written address, which is read, marked , signed by the president, and attached to the proceedings.]

[Instruction.—*Where the address of the prosecutor is not in writing, the Court should record so much as appears to them material, and so much as the prosecutor requires to be recorded.]*

First witness for prosecution.

* Here insert his number, rank, name and regiment, and appointment (if any), or other description.

The prosecutor proceeds to call witnesses.

(*) being duly sworn is examined by the prosecutor.

Cross-examined by the Accused.

Re-examined by the Prosecutor.

Examined by the Court.

App. II.

His evidence is read to the witness.

[Instruction.—*The fact that Rule 83 (B) has been complied with should be recorded.*]

The witness withdraws.

VARIATIONS.

The accused declines to cross-examine this witness.

[Instruction.—*In every case where the accused does not cross-examine a witness for the prosecution this statement is to be made, in order that it may appear on the face of the proceedings that he has had the opportunity given him of cross-examination.*]

The Court, at the request of the accused, allow the cross-examination of the witness to be postponed.

The accused [or the prosecutor] objects to the following question :—

The Court is closed to consider their decision.

The Court overrule [or allow] the objection, and the Court is re-opened and the decision announced.

The witness, on his evidence being read to him, makes the following explanation or alteration :—

Examined by the prosecutor as to the above explanation or alteration.

Examined by the accused as to the above explanation or alteration.

The prosecutor and the accused decline to examine him respecting the above explanation or alteration.

being duly sworn, is examined by the prosecutor. *Second witness for prosecution.*
(The examination, &c., of this and every other witness proceeds as in the case of the first witness.)

VARIATION.

The Court think it expedient to continue to sit after six o'clock in the afternoon, on the ground that [state the grounds].

At o'clock the Court adjourn until o'clock on the 19th, at o'clock, the Court re-assemble, pursuant to adjournment, present the same members as on the of *Adjournment. Second day.*

VARIATIONS.

[Instructions.—(1) *If a member is absent, and his absence will reduce the Court below the legal minimum, and it appears to the members present that the absent member cannot attend within a reasonable time, the president or senior member present will thereupon report the case to the convening officer.*

(2) *If either the president or the Judge-Advocate is absent, and cannot attend within reasonable time, the Court will adjourn, and the president or senior member present will thereupon report the case to the convening authority. (See Rules of Procedure 66 and 102.)*

App. II.

(Rank—Name—Regiment) being absent.

(The absence is accounted for.)

Absent
member.A medical certificate [or letter, or as the case may be] is produced, read,
marked and attached to the proceedings.

The Court adjourn until

or

There being present members, the trial is proceeded with. *not less than the legal minimum)*New Presi-
dent.An order bearing date , appointing (the
senior member) president of the Court-martial in the place of
is read, marked , signed by the
president, and attached to the proceedings.New Judge-
Advocate.

The trial is proceeded with.

An order, bearing date , appointing , to act as
Judge-Advocate in the place of , who , is read,
marked , signed by the president, and attached to the
proceedings, and the new Judge-Advocate duly sworn.

The trial is proceeded with.

[Instructions.—(1) *If the Court, in consequence of the adjournment having
been prolonged by the senior officer on the spot, or otherwise, do not
meet on the day to which they previously adjourned, or if the adjourn-
ment was until further orders, the words "pursuant to adjournment"
will be omitted from the above Form, and the cause of their meeting at
the above time will be entered in the proceedings.*(2) *If the place of meeting has been altered by orders, or otherwise,
the place of meeting and the reason for meeting at that place will be
entered in the proceedings.]*

Examination [cross-examination] of continued.

The prosecution is closed.

DEFENCE.

Question to
accused.

- A. Do you apply to give evidence yourself as a witness ?
 Q. Yes. [No.]
 A. Do you intend to call any other witness in your defence ?
 Q. Yes. [No.]
 A. Is he a witness as to character only ?

VARIATION.

[*If the accused is defended by counsel or by an officer having the rights
of counsel, and does not apply to give evidence himself.]*Do you wish to make any statement in addition to the address made
by your counsel [or] ?(6.) [Instruction.—*If the accused does not wish to give evidence
himself, and calls no witnesses to the facts of the case, and, if defended
by counsel or by an officer having the rights of counsel, does not wish
to make a statement in addition to the address by that counsel or
officer, adopt (6) and omit (7) and (8).]*The prosecutor addresses the Court upon the evidence for the
prosecution as follows [or, if the address is written, hands in a written
address, which is read, marked , signed by the president, and
attached to the proceedings.][Instruction.—*Where the address of the prosecutor is not in writing
the Court should record so much as appears to them material and so
much as the prosecutor requires to be recorded.*

Have you anything to say in your defence ?

Question to
accused.(This question will always be asked, whether the accused has given
evidence or not.)

VARIATION.

The Court, at the request of the accused, adjourn until
enable him to prepare his defence.

to

The accused in his defence says [or hands in
a written address, which is marked signed by the
president, and attached to the proceedings].

[Instruction.—If the address of the accused is not in writing and is
delivered by himself, the material portions should be taken down in
the first person, and as nearly as possible in his own words.

If the address is not in writing and not delivered by the accused
himself, the material portions should be recorded.

In either case any matter which is requested by or on behalf of the
accused to be recorded should be recorded, and care must be taken,
whether a request is made or not, to record every point brought
forward in the defence or in mitigation of punishment.]

The accused calls the following witnesses as to character :

* is duly sworn.

First witness
as to
character.

* Here insert
his number,
rank, name,
and regi-
ment, and
appoint-
ment (if
any), or
other de-
scription.

Examined by the Accused.

Cross-examined by the Prosecutor.

Re-examined by the Accused.

Examined by the Court.

His evidence is read to the witness.

[Instruction.—The fact that Rule 83 (B) has been complied with
should be recorded.]

The witness withdraws.

VARIATION.

The prosecutor declines to cross-examine this witness.

The witness, on his evidence being read to him, makes the following
explanation or alteration.

Examined by the accused as to the above explanation or alteration.

Examined by the prosecutor as to the above explanation or alteration.

The accused and the prosecutor decline to examine him respecting the
above explanation or alteration.

App. II. (7.) [Instruction.—*If the accused gives evidence himself, but calls no other witnesses to the facts of the case, adopt (7) and omit (6) and (8).*]

The accused takes his stand at the place from which other witnesses give their evidence.

The accused is duly sworn.

The accused gives his evidence.

Cross-examined by the Prosecutor.

The accused gives any evidence that another witness might give on re-examination.

Examined by the Court.

The evidence of the accused is read to him.

[Instruction.—*The fact that Rule 83 (B) has been complied with should be recorded.*]

The accused withdraws from the place from which he has given his evidence.

VARIATION.

The prosecutor declines to cross-examine the accused.

The accused, on his evidence being read to him, makes the following explanation or alteration.

Examined by the prosecutor as to the above explanation or alteration.

The prosecutor declines to examine him respecting the above explanation or alteration.

The prosecutor addresses the Court upon the evidence for the prosecution and the evidence of the accused as follows [*or, if the address is written, hands in a written address which is read, marked* , signed by the president, and attached to the proceedings].

[Instruction.—*When the address of the prosecutor is not in writing, the Court should record so much as appears to them material, and so much as the prosecutor requires to be recorded.*]

Have you anything to say in your defence ?

VARIATION.

The Court, at the request of the accused, adjourn until
enable him to prepare his defence.

to
Question to
accused.

The accused in his defence says
hands in a written address, which is read, marked
the president, and attached to the proceedings.]

[or,
signed by

[Instruction.—If the address of the accused is not in writing,
and is delivered by himself, the material portions should be taken
down in the first person and as nearly as possible in his own words.

If the address is not in writing and not delivered by the accused
himself, the material portions should be recorded.

In either case any matter which is requested by or on behalf of
the accused to be recorded should be recorded, and care must be taken,
whether a request is made or not, to record every point brought
forward in the defence or in mitigation of punishment.]

The accused calls the following witnesses as to character :
* is duly sworn.

First wit-
ness as to
character.

Examined by the Accused.

* Here insert
his number,
rank, name,
and regi-
ment, and
appoint-
ment (if
any), or
other
description.

Cross-examined by the Prosecutor.

Re-examined by the Accused.

Examined by the Court.

His evidence is read to the witness.

[Instruction.—The fact that Rule 83 (b) has been complied with
should be recorded.]

The witness withdraws.

VARIATION.

The prosecutor declines to cross-examine this witness.

The witness, on his evidence being read to him, makes the following
explanation or alteration.

Examined by the accused as to the above explanation or alteration.

(M.L.)

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App. II.

Examined by the prosecutor as to the above explanation or alteration.

The accused and the prosecutor decline to examine him respecting the above explanation or alteration.

(8.) [Instruction.—*If the accused calls other witnesses to the facts of the case, whether he himself gives evidence or not, or if the accused, being defended by counsel or by an officer having the rights of counsel, wishes to make a statement in addition to the address by that counsel or officer, then omit paragraphs (6) and (7), and adopt (8).]*

Question to
accused.

Have you anything to say in your defence ?

VARIATION

The Court, at the request of the accused, adjourn until to enable him to prepare his defence.

The accused in his defence says [or if his address is in writing, hands in a written address, which is read, marked signed by the president, and attached to the proceedings].

[Instructions.—(1) *If the defence of the accused is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.*

(2) *If the address is not in writing and is not delivered by the accused himself, the material portions should be recorded.*

(3) *In either case, any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.]*

is duly sworn (a).

* Here insert *
his number,
rank, name,
and regi-
ment, and ap-
point-
ment (if
any), or
other de-
scription.

Examined by the Accused.

Cross-examined by the Prosecutor.

Re-examined by the Accused.

Examined by the Court.

His evidence is read to the witness.

[Instruction.—*The fact that Rule 83 (B) has been complied with should be recorded.*]

The witness withdraws.

(a) For the evidence of the accused, the form in (7) should be followed.

VARIATIONS.

The prosecutor declines to cross-examine this witness.

The witness, on his evidence being read to him, makes the following explanation or alteration.

Examined by the accused as to the above explanation or alteration.

Examined by the prosecutor as to the above explanation or alteration.

The accused and the prosecutor decline to examine him respecting such explanation or alteration.

[Where the accused is defended by counsel or an officer having the rights of counsel.] The accused makes the following statement in addition to the address by his counsel [or].(a)

The prosecutor [by leave of the Court] calls witnesses in reply.

The accused makes the following address [or, if the address is in writing, hands in a written address, which is read, marked , signed by the president, and attached to the proceedings].

The prosecutor makes the following reply [or, if the reply is in writing, hands in a written reply, which is read, marked , signed by the president, and attached to the proceedings];

or,
The prosecutor declines to make a reply.

[Instruction.—Where the reply of the prosecutor is not in writing, the Court should record so much as appears to them material, and so much as the prosecutor requires to be recorded.]

If the address of the accused is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.

If the address is not in writing and not delivered by the accused himself the material portions should be recorded.

In either case, any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.]

VARIATIONS.

The Court, at the request of the accused, adjourn until to enable the accused to prepare his address.

The Court, at the request of the prosecutor, adjourn until to enable the prosecutor to prepare his reply.

SUMMING UP.

(9.) The Judge-Advocate makes the following summing up [or, if the summing up is in writing, hands in a written summing up, which is read, marked , signed by the president, and attached to the proceedings].

VARIATIONS.

The Judge-Advocate and the Court think a summing up unnecessary.

or,
The Court, at the request of the Judge-Advocate, adjourn until to enable him to prepare his summing up.

(a) The accused must make his statement at the close of the case for the prosecution and before the address by his counsel; see R.P. 94.

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FINDING.

Finding.

(10.) The Court is closed for the consideration of the finding.

Not Guilty.

The Court find that the accused (*No.—Rank—Name—Regiment*) is not guilty of the charge [and honourably acquit him of the same], but is guilty of the

or,

Guilty.

is guilty of the charge [all the charges];

or,

is guilty of the charge, and guilty of the charge with the exception of the words [or with exception that]

or,

is not guilty of desertion, but is guilty of absence without leave;

[Instruction.—*Any special finding allowed by Section 58 of the Army Act may be expressed in this form.*]

or,

Special findings.

find that the accused did [*Here set out such particulars in any charge as the Court find to be proved*], but the Court doubt whether such facts constitute in law the offence stated in the charge, or in the charge, or in the charge, and therefore they find him guilty of the offence in such one of those charges as the facts in law constitute;

or,

adjourn for the purpose of consulting the convening [or, as the case may be, confirming] officer;

On re-assembly on the day of , and on reading the opinion of , which is marked and annexed to the proceedings, find that the accused, &c.

PROCEEDINGS ON ACQUITTAL OF ALL THE CHARGES.

Acquittal.

(11.) The Court find that the accused (*No.—Rank—Name—Regiment*) is not guilty of the charge [or all the charges];

or,

is not guilty of the charge [or all the charges] and honourably acquit him of the same.

The findings are read in open Court, and the accused is released.

Signed at , this day of 19 .

(Judge-Advocate.)

(President.)

VARIATION.

Insanity.

The Court find that the accused [*No.—Rank—Name—Regiment*] is, by reason of insanity, unfit to take his trial;

or,

is guilty of the charge or charges, but was insane at the time of the commission of the offences specified in those charges.

Signed at , this day of (Signature)

(Judge-Advocate.)

(President.)

Confirmed,

At

this

day of

(Signature of Confirming Authority.)

PROCEEDINGS ON CONVICTION.

Before Sentence.

*Evidence of
character,
&c.*

*Question by
the Presi-
dent.*

*Answer by
the witness.*

(12.) *The Court being re-opened the accused is again brought before it.

(*Number—Rank—Name—Regiment*) is duly sworn.

Have you any evidence to produce as to the character and particulars of service of the accused?

I produce this statement.

The witness hands in the statement, which should be in the following form :

* In cases where a plea of "guilty" is proceeded with after the finding on a plea of "not guilty," this sentence will be struck out.

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STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE
OF ACCUSED.

Number—Rank—Name—Regiment , [or as the case may be].

(1) The following is a fair and true summary of the entries in the regimental and squadron, troop, battery, or company conduct sheets of the accused, exclusive of convictions by a court-martial or a civil court, and of cases in which trial has been dispensed with :—

	Within last 12 months.	Since Enlistment.	
For	,	times	times.
For	,	times	times.

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

[Instruction.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.]

(2) The accused has not been previously convicted.

or,

The previous convictions of the accused by a court-martial or a civil court, and dispensations with trial under A.A. 73, are set out in the Schedule annexed to this statement.

(3) The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for beginning on the day of

(4) The accused has been in confinement, awaiting trial on the present charges, for days in civil custody, and days in military custody, making a total of days in custody, of which days were spent in hospital.

(5) The present age of the accused according to his attestation paper is

(6) The date of his attestation specified in his attestation paper is

(7) The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

(8) The accused is entitled to deferred pay or gratuity in respect of service.

(9) The accused is entitled to reckon service for the purpose of determining his pension, &c.

[Instruction.—If the Court is a general or district court-martial there should be added to the above the following] :—

(10) The accused is in possession of or entitled to no military

App. II. decoration or military reward which the Court can forfeit [or is in possession of or entitled to (*state any military decoration or reward which the Court can forfeit*)].

(11) (*If the accused is a warrant officer not holding an honorary commission.*) The accused before he was made a warrant officer last held the regimental rank of .

(12) (*In the case of an officer or a warrant officer holding an honorary commission.*) The accused holds in the army the [honorary] rank of , dated , and in his regiment [or corps or department] the rank of dated .

(13) The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of , years.

In the rank of , years.

In the rank of , years.

[Instruction.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*]

SCHEDULE.

Of convictions by a court-martial or civil court and of cases in which trial has been dispensed with of accused, No.

Rank , Name , of regiment [or as the case may be].

[Instruction.—*A verbatim extract from the regimental book stating these convictions and dispensations with trial must be inserted.*]

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this day of

A.B.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President and annexed to the proceedings.

Question by
the President.

Is the accused the person named in the statement which you have heard read?

Answer by
the witness.

Q.

Have you compared the contents of the above statement with the regimental books?

A.

Q.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

A.

Cross-examined by the Accused.

Re-examined.

or

The accused declines to cross-examine this witness.

His evidence is read to the witness as directed by R.P. 83 (B).

[Instruction.—*Any further question will be put and any evidence produced which the Court require as to any point respecting the character and service of the accused on which the Court desire to have information for the purpose of their sentences.*]

At the request of the accused, or by the direction of the Court, the regimental books, or a certified copy of the material entries therein, must be produced for the purpose of comparison with the statement.

The accused is entitled to call the attention of the Court to any entries in the regimental books, or in the certified copy above mentioned, and to show that they are inconsistent with the statement.

When all the evidence on the above matters has been given, the accused may address the court thereon.

If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment, in addition to that to be awarded by the Court (for instance, forfeiture or reduction of corps pay), the prosecutor must call the attention of the Court to the fact, and the Court must enquire into the nature and amount of that additional punishment.

NOTE.—Where an offence is unusually prevalent in a district or garrison, attention should be drawn to the fact periodically in local orders, and not by special directions to courts-martial.

Do you wish to address the Court

Question to
the accused.

Answer.

The court is closed for the consideration of the sentence.

SENTENCE.

[Instruction.—The provisions of Sections 44, 182, and 183 of the Army Act must be carefully attended to by the Court in passing sentence.]

The Court sentence the accused (No.—Rank—Name—Regiment.)

Sentence.

[Instruction.—The sentence is to be marginally noted in every case.]

In the case of an officer :—

(a) to suffer death by being shot [hanged].

Death.

(b) to suffer penal servitude for the term of years [or for life].

Penal
servitude
years.

(c) to be imprisoned with hard labour [without hard labour] for

Imprison-
ment H.L.
(or without
H.L.)
for

[Instruction.—(1) As to the term of imprisonment see below in the case of a soldier.

(2) A sentence of cashiering should precede a sentence of imprisonment or penal servitude.]

(d) to be cashiered.

Cashiered.

(e) to be dismissed from His Majesty's service.

Dismissed.

(f) [Where the officer's army rank is superior to his regimental rank.]

Forfeiture
of seniority
of rank.

to take rank and precedence as in the
regiment as if his appointment to that
regiment bore date the day of , and
to take rank and precedence in the Army as if his
appointment as bore date the day of

[Or, where the officer's army and regimental rank are the same.]

to take rank and precedence in the regiment
and in the Army as if his appointment as
bore date the day of

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[Or, where the officer has no regimental rank.]
to take rank and precedence in the Army as if his
appointment as in the Army bore date
the day of

[Instruction.—In each case the form may be varied so that the Court may exercise the power under the Army Act, s. 44 (f), and Rule of Procedure 47 of sentencing to forfeiture of seniority either in the corps, or in the Army, or in both.]

Reprimand
or severe
reprimand.

(g) to be reprimanded [or severely reprimanded].
(h) to forfeit the [state the medal, clasp, and decoration, or any of them, which is to be forfeited] with any annuity or gratuity attached thereto.

Stoppages.

(i) to be put under stoppages of pay until he has made good the sum of in respect of or [and] until he has made good the value of the following articles, viz, 1 value 1 value, &c.

In the case of a soldier:—

Death.
Penal servitude years.
Impt. H.L. (or without H.L.)
for
Detention.
for
Field punishment No. 1
for
Field punishment No. 2
for
Forfeiture of pay
for

(j) to suffer death by being shot [hanged].
(k) to suffer penal servitude for the term of years [or for life].
(l) to be imprisoned with hard labour [without hard labour] for
(m) to undergo detention for
(n) to suffer field punishment, that is to say, field punishment No. 1, for
(o) to suffer field punishment, that is to say, field punishment No. 2, for
(oo) to forfeit all ordinary pay for a period of

[Instruction.—(1) If a person charged is at the time of sentence undergoing imprisonment or detention under a former sentence, a new sentence of imprisonment or detention must not exceed such a term as will make up a period of two years from the date of the former sentence.]

(2) In the case of a non-commissioned officer, a sentence of reduction to the ranks should precede a sentence of penal servitude, imprisonment, detention, or field punishment, although those sentences necessarily involve a reduction to the ranks.

Where, for any reason, a court consider that a sentence of reduction to a lower rank in the case of a N.C.O. would be too severe a sentence, they can sentence the offender to forfeiture of seniority of rank.]

Discharged with ignominy.
Dismissed.

(p) to be discharged with ignominy from His Majesty's service.
(q) [if belonging to the territorial force] to be dismissed [from His Majesty's service].
(r) [if a non-commissioned officer (a)].

Forfeiture of seniority, and reduction.

(1) to take rank and precedence as if his appointment to the rank of bore date ; or
(2) to be reduced to the rank of serjeant; or
(3) to be reduced to the rank of corporal; or
(4) to be reduced to the rank of bombardier; or to be reduced to the rank of second corporal; or

(a) A sentence of reduction from or to an acting or lance rank is void; e.g., a sentence on a corporal to be reduced to lance-corporal is void. See A.A. 183 (3) note.

- (5) to be reduced to [a lower grade] or to be reduced **App. 11.**
to the ranks.
- (s) to be fined *Fined l. s. d.*
- (t) to be put under stoppages of pay until he has made good *Stoppages.*
the sum of _____ in respect of _____
or [and] until he has made good the value of the
following articles, viz., 1 _____ value _____,
1 _____ value _____, &c.
- (u) to forfeit all ordinary pay for a period of *Forfeiture of pay.*
- (w) to forfeit [state number or all] good-conduct
badge [or badges] with the pay attached thereto.
- to forfeit deferred pay in respect of [all or
calendar months or _____ years] previous service.
- to forfeit [all or _____ years, or _____ calendar
months] past service for the purpose of determining pension.
- to forfeit the [state medal, clasp, and decoration, or
any of them, which is to be forfeited] (a).

[Instruction.—(1) An offender may be sentenced to all or any of the above forfeitures.

(2) In the case of a warrant officer, a district court-martial must use one of the following forms; a general court-martial may use them in lieu of, or in addition to, the foregoing forms, see s. 182 (2).]

(x) To be dismissed from the service.

or,
(y) To be reduced in the list of his rank as if his appoint-
ment thereto bore date the _____ day of _____

or,
To be reduced to an inferior class of warrant officer;
that is to say, to _____

or,
(z) To be reduced to [a lower grade];

or,
(zz) [If he was originally enlisted as a soldier, but not other-
wise]
To be reduced to the ranks.

RECOMMENDATION TO MERCY.

The Court recommend the accused to mercy on the ground that _____

The Court recommend that _____ of the service forfeited
under section 79 of the Army Act shall be restored on the ground that _____

SIGNATURE.

Signed at _____, this _____ day of _____ 19 ____.

(Signature) _____ (Signature) _____
Judge-Advocate. President.

(a) Under P.W. Art. 1238, a soldier convicted by a court-martial of desertion, fraudulent enlistment, or an offence under A.A. 17 or 18, forfeits all medals and decorations (other than the Victoria Cross) without any award by the court-martial. In such cases therefore an award should not be made. The same is the case with a soldier discharged with ignominy, or for misconduct, &c.

When a court-martial sentences a soldier to forfeit any medal or decoration (other than the Victoria Cross) to which an annuity or gratuity is attached, the court should only sentence the offender to forfeit the medal or decoration as the case may be. The forfeiture of the annuity or gratuity attached thereto should not be mentioned in the sentence as it is consequential on the forfeiture of the medal or decoration. P.W. 1238.

A court cannot sentence an offender to forfeit the Victoria Cross.

App. II.

REVISION.

Revision. (13.) At _____, on the _____ day of _____ at _____ o'clock, the Court re-assemble by order of _____ for the purpose of re-considering their Present, the same members as on the _____

VARIATION.

[Instructions.—If a member is absent and the absence will reduce the Court below the required minimum, or if he is the president, and it appears to the members present that such absent member cannot attend within a reasonable time, the president, or, in his absence, the senior member present shall thereupon report the case to the convening officer.]

Absent member.

[Rank, name, regiment] being absent.
[The absence is accounted for.]

A medical certificate [or letter, or as the case may be] is produced, read, marked _____, and attached to the proceedings.

There being present _____ [not less than the required minimum] members the Court proceeds.

Revised finding.

The letter [order or memorandum] directing the re-assembly of the Court for the revision, and giving the reasons of the confirming authority for requiring a revision of the finding [finding and sentence] [or sentence] is read, marked _____, signed by the president, and attached to the proceedings.

Sentence.

The Court having attentively considered the observations of the confirming authority, and the whole of the proceedings:

a. do now revoke their finding and sentence, and find _____ and sentence the accused to _____

or,

b. do now revoke their sentence, and now sentence the accused, &c., &c., _____

or,

c. do now respectfully adhere to their sentence [or finding and sentence]

Signed at _____, this _____ day of _____ 19 ____ .
Judge-Advocate. President.

CONFIRMATION.

Confirmation.

(14.) Confirmed,

or,

I vary the sentence so that it shall be as follows _____ and confirm the finding and the sentence as so varied,

or,

I confirm the finding and sentence of the Court, but mitigate [remit, or, commute _____].

or,

[Where it is necessary to confirm the special finding on several alternative charges.]

I confirm the finding on _____ and charges, and I confirm the special finding relating to the _____ and _____ charges, and declare that that finding amounts to a finding of guilty on the _____ charge, and of not guilty on the _____ and _____ charges.

I confirm the sentence but mitigate [remit, or commute];

or

[Where the confirming officer desires partly to reserve his con- App. II.
firmation,]

I confirm the finding of the Court on the _____ and
charges and reserve for confirmation by superior
authority the finding on the _____ and _____ charges,
and the sentence ;

or,
I confirm the findings of the Court, but reserve the sentence
for confirmation by superior authority ;

or,
I confirm the findings of the Court and the sentence of the Court
as to _____, and reserve the sentence so far as it
for confirmation by superior authority ;

or,
[Where the finding is not confirmed,]

Not confirmed [the reasons for non-confirmation may be stated].

Signed at _____, this _____ day of _____ 19 .

(Signature of Confirming Authority.)

[Instruction.—Any remarks of the confirming authority should be
separate from and form no part of the proceedings. The confirming
authority will in no case comment upon a finding of "not guilty,"
or upon the inadequacy of a sentence.]

[Where the declaration respecting a special finding on alternative
charges is added subsequently to the confirmation (Rule 55),]

I declare that the special finding relating to the _____ and
charges amounts to a finding of guilty on the _____
charge, and of not guilty on the _____ and
charges.

Signed at _____, this _____ day of _____ 19 .

(Signature of Authority.)

PROMULGATION.

Promulgated and extracts taken at _____, this _____ day
of _____ 19 .

(Signature of officer in charge of documents.)

FORM OF SUMMONS.

Form of Summons to a Civil Witness.

A.F.A. 13.

To

Whereas a _____ court-martial has been ordered to assemble
at _____ on the _____ day of _____ 19 , for
the trial of _____, of the _____ regiment, I do
hereby summon and require you A. B.
to attend, as a witness, the sitting of the said Court at
on the _____ day of _____ at _____ o'clock in
the forenoon [and to bring with you the documents hereinafter

App. II. mentioned, namely, _____, and so to attend from day to day until you shall be duly discharged, whereof you shall fail at your peril.

Given under my hand at _____ on the _____ day of _____ 19 _____

(Signature)

Convening Officer [or Judge-Advocate or President of the Court or Commanding Officer of the Accused]

FORM FOR ASSEMBLY AND PROCEEDINGS OF FIELD GENERAL COURT-MARTIAL (a).

PROCEEDINGS.

*State the place and country. A. Order convening the court.

*At _____ this _____ day of _____ 19 _____

Beginning of Form where Troops are not on Active Service.

Whereas complaint has been made to me, the undersigned, an officer in command of _____, in the above-named country, that the persons named in the annexed schedule, being subject to military law, and under my command, have committed the offences in the said schedule mentioned, being offences against the property or person of inhabitants of or residents in the above-mentioned country.

Beginning of Form where Troops are on Active Service.

Whereas it appears to me, the undersigned, an officer in command of _____ on active service, that the persons named in the annexed schedule, and being subject to military law, have committed the offences in the said schedule mentioned.

End of Form applicable to all cases.

And I am of opinion that it is not practicable that such offences should be tried by an ordinary general court-martial; [†and that it is not practicable to delay the trial for reference to a superior qualified officer].

I hereby convene a field general court-martial to try the said persons, and to consist of

†Omit except where convening officer is not a commanding officer and is below rank of field officer.

PRESIDENT.

Rank.

Name.

Regiment.

MEMBERS.

Rank.

Name.

Regiment.

(a) See Rules 105-123.

[I am of opinion that three officers are not available having due regard to the public service.] App. II.

(Signed)

I certify that the above Court assembled on the _____ day of _____ and duly tried the persons named in the said schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that schedule.

Signed this _____ day of _____, 19 _____
C— D—

President of the Court-martial.

I have dealt with the findings and sentences in the manner stated in the last column of the above schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences; [*and I am of opinion that it is not practicable, having due regard to the public service, to delay the cases for confirmation by any superior qualified authority]

Signed this _____ day of _____, 19 _____
E— F—

Field [or General] Officer in the force or commanding].

I have dealt with the reserved findings and sentences in the manner stated in the last column of the schedule, and, subject to what I have there stated, I hereby confirm the said reserved findings and sentences.

Signed this _____ day of _____, 19 _____
G— H—

General [Field] Officer in the force.

Subject to what I have stated in the last column of the schedule, I hereby confirm the [finding and] sentence of death in the case of _____ and of penal servitude in the case of _____ [†and in the case of the above sentences of death I am of opinion that by reason of] _____ it is not practicable, having due regard to the public service, to delay the case for confirmation by any qualified officer superior to myself].

Signed this _____ day of _____, 19 _____
J— K—

General [Field] Officer in chief command of the forces.

† Omit except where the court-martial consists of two officers only.
B. Certificate of president as to proceedings.

O. Confirmation.

*Omit except where under rules it is ordinarily the duty of the confirming officer to reserve the case

D. Confirmation of reserved sentences.

E. Confirmation of sentence of death or penal servitude.

†Omit where confirmed by officer in chief command.
J. State, according to the circumstances, the nature of the country, or the great distance, or the operations of the enemy.

App. II.

SCHEDULE.

Date 19 . No.

*If the name of the person charged is unknown, he may be described as unknown, with such addition as will identify him.

†Recommendation to mercy to be inserted in this column.

Name of alleged Offender.*	Offence charged.	Plea.	Finding, and if convicted, sentence.†	How dealt with by confirming officer.
Peter Smith (sutler)	Offence against person of inhabitant of country	Guilty	Guilty. Field punishment No. 1 for .	Confirmed. I remit E—F—
262, Private James Robinson, 1st Batt. —shire Regiment	Breaking into house in search of plunder	Not guilty	Guilty. Imprisonment for	Not confirmed. E—F—
564, Private Thomas Jones, 1st Batt. —shire Regiment	Drunk on post	Not guilty	Guilty. Death. Recommended to mercy	Reserved [or Confirmed], but commuted to field punishment No. 1 for E—F— or Confirmed, but commuted to years' penal servitude. J—K—
Person accompanying force (name unknown), white jacket and trousers, scar on right cheek	Impeding provost-marshal	Not guilty	Not guilty	
Soldier in uniform of —shire Regiment (name unknown)	Offence against property of inhabitant of country	Not guilty	Guilty. Field punishment No. 2 for and to forfeit all ordinary pay for a period of	Reserved. E—F— Confirmed. G—H—
P—Q— Convening Officer.		C—D— President.		

MEMORANDA.

The following Memoranda are intended for the guidance of commanding and convening officers and others in relation to courts-martial with a view to securing uniformity of practice in details not specially dealt with in the Rules of Procedure.

These Memoranda do not form part of the Appendix to the Rules of Procedure.

Commanding Officers.

1. Before applying for the trial of an offender a commanding officer should satisfy himself—

(a) That the accused is charged with an offence which is an offence against the Army Act;

- (b) That the offender is not exempt from trial under the provisions of A.A. 161 ;
- (c) That the offence is not one of those referred to in K.R. 487 which he can himself dispose of without reference to superior authority, or, if it is one of those offences, that from its gravity or nature or from the previous character of the accused, he ought not to deal with it on account of the inadequacy of his powers of punishment ;
- (d) That the evidence justifies the trial of the offender on the charge ;
- (e) That the charge is properly framed under the appropriate section of the Army, or other, Act ;
- (f) That when once an accused has elected to be tried upon the charge as read out to him from the guard report, it is in no circumstances added to or increased in gravity.

2. When making application for the trial of the offender, the commanding officer should satisfy himself that the following provisions are complied with :—

- (a) The application for trial must be accompanied by all necessary documents ;
- (b) All irrelevant and hearsay statements must be eliminated from the summary of evidence ;
- (c) The name of the officer who it is proposed should act as prosecutor must be stated on the form of application for trial ;
- (d) If the accused has elected to be tried under A.A. 46 (8), the fact must be clearly stated on the form of application for trial ;
- (e) When it is intended to prove any facts in respect of which any deduction from the ordinary pay of the accused can be awarded in consequence of the offence charged, those facts must be clearly shown in the particulars of the charge ;
- (f) In forwarding the names and dates of commissions of officers detailed for court-martial duty, the date of the commission in the territorial force should be given, in the case of an officer qualified by reason of his service in that force, so as to enable the Court to satisfy themselves as provided by R.P. 22 (A) ;
- (g) The charge-sheet should be signed by the officer in actual command of the unit to which the accused belongs ;
- (h) Sufficient space should be left at the foot of the charge-sheet for the orders of the convening officer to be entered. The place and date should be entered by the officer signing the orders (see p. 659).
- (i) The section of the Act under which each charge is framed should be entered in the margin (in red ink), opposite the charge to which it refers ;
- (j) If the accused has elected to be tried instead of submitting to a summary award, it should be so stated (in red ink) at the top of the charge-sheet ;
- (k) When part of the evidence is documentary, the statement of the officer made on producing the documents should be included in the summary ;
- (l) A statement of evidence as to facts should commence by recording the place, date, and time (if material) to which the evidence refers ;

Charge-sheet.

Summary of evidence.

- (m) Where the charge is for deficiency of kit, unless A.F.B. 115 is to be produced in evidence, the fact that the accused has been at some time previously in possession of a complete kit, or of the articles alleged to be deficient; the date and place of discovering any subsequent deficiencies, and that none of the articles have since been recovered, should be included in the summary of evidence. Any articles recovered will, of course, be omitted from the charge.
- (n) A statement that the requirements of R.P. 4 (c, d, e) have been complied with should be entered at the end of the summary of evidence and signed and dated by the officer taking the evidence.

3. After trial has been ordered the commanding officer should satisfy himself as to the following provisions having been complied with :—

- (a) The accused must be warned for trial—in the case of a regimental court-martial not less than 18 hours, and in the case of any other description of court-martial, not less than 24 hours, before the Court assembles ;
- (b) The accused must be informed by an officer of every charge on which he is to be tried, must be given a copy of the charge-sheet and of the summary of evidence, and informed of the rank, name and corps of the officers who are to form the Court as well as of any waiting members ;
- (c) The accused must be informed that on his giving the names of any witnesses for the defence, reasonable steps will be taken to procure their attendance ;
- (d) The accused must be afforded proper opportunity for preparing his defence ;
- (e) No officer of the unit may be detailed as a member of the Court who is ineligible or disqualified to serve under the provisions of R.P. 19 ;
- (f) The accused must be seen by a medical officer on the morning of each day the Court is ordered to sit for his trial.

4. After confirmation the commanding officer must see that the following provisions are complied with :—

- (a) The proceedings must be promulgated as laid down in K.R. 593 ;
- (b) The record of the promulgation must be entered on the proceedings in the form shown on p. 699.
- (c) The proceedings must be returned without delay to the proper authority after promulgation.

Convening Officer.

5. The convening officer should satisfy himself as regards para. 1 and para. 2 (a) to (e) (above), and in addition he will see :—

- (a) That the court-martial he is about to convene is of the proper description ;
- (b) That the president and prosecutor are named in the garrison or other order directing the Court to assemble ;
- (c) That no officer is detailed to serve on the Court who is ineligible or disqualified under R.P. 19 ;*

* For instance, if the accused is charged with embezzling moneys belonging to an officers' mess of a particular unit, he will be careful to see that no officer of that unit is detailed to sit on the court-martial.

- (d) In cases of fraud that the charge-sheet and summary of evidence are, whenever practicable, submitted to the J.A.G. before trial is ordered.
- (e) In the case of general courts-martial at home stations that the charge-sheet, summary of evidence and list showing the rank, name, corps and date of commission of each officer to serve on the Court are submitted to the J.A.G., together with the rank, name and corps of the officer whom he recommends should be appointed to serve as judge advocate at the trial.

If it becomes necessary for a convening officer to avail himself of the services of officers of another command for court-martial duties, the following procedure will be adopted. The convening officer will apply to the command concerned asking for the names of officers to compose the court and these names will be inserted in A.F.A. 47. The command which furnishes the officers should then insert in the command orders an order to the effect that the "undermentioned officers have been placed at the disposal of the Officer Commanding No. District [or G.O.C. th Brigade] for duty at a court-martial to assemble at [place] on [date.]"

6. Where the convening officer is of opinion:—

- (a) That an officer of the prescribed rank is not available as president ; or
- (b) That, for the trial of an officer, officers of equal or superior rank to the accused are not available ; or
- (c) That it is not practicable to compose a court-martial of officers belonging to different corps ; or
- (d) That it is not practicable to appoint an officer of the special reserve or of the territorial force to serve on a court-martial for the trial of an offender belonging to those branches of the service respectively—

he will record his opinion on the order for the assembly of the Court.

7. Where the convening officer or the senior officer on the spot considers that military exigencies or the necessities of discipline render it impossible or inexpedient to observe any of the Rules of Procedure referred to in R.P. 104, he must make on A.F. A 49 a declaration to that effect, specifying the nature of those exigencies or necessities.

General.

8. When several persons are tried successively by the same Court, the time at which each trial commences will be entered on its proceedings as the time at which the trial commences.

9. The full name and description of the accused should be entered on the first page of the proceedings.

10. Every witness, including the officer producing Army Form B 296, must be sworn in the presence of the accused to whom his evidence refers ; he must not be examined on a former oath taken in the presence of another accused person.

11. The prosecutor or other person producing documents must be sworn.

12. When copies of documents are accepted it should be stated in the proceedings that they have been compared with the originals and found correct.

13. A certified true copy on A.F.B. 115 of an entry in A.B. 161

is sufficient evidence of such record, and it is unnecessary for the court to compare A.F.B. 115 with A.B. 161.

14. Articles of equipment, clothing, &c., should be entered throughout the proceedings in the same order as stated in the charge.

15. Where the value of arms, ammunition, equipment, or clothing is proved, or where damage is proved, the accused, if convicted, should be sentenced to be put under stoppages, notwithstanding the fact that he may also be sentenced to be discharged, in case the latter part of the sentence should be remitted.

Forms and documents.

16. Included in Army Form A 9 are two sets of pages "C" and "D"—one for proceedings on the plea of "Not guilty" and one for proceedings on the plea of "Guilty." Where the pleas recorded are all "Not guilty," or all "Guilty," the set pertaining to the plea or pleas recorded, is alone to be used.

When some of the pleas are "Not guilty" and some "Guilty," both sets will be used, the Court proceeding first on the plea or pleas of "Not guilty" up to and including the finding, and then on the plea of "Guilty."

17. The charge-sheet is to be inserted in the proceedings after sheet B; all other documents are to be attached at the end of the proceedings in the order of their production to the Court.

18. Every document attached to the proceedings should be signed by the president and marked with a reference letter, preferably not one used in Army Form A 9.

19. In the case of a plea of "Not guilty" the summary of evidence will be enclosed with the proceedings when sent to the confirming officer; and in cases where there is any material variance between the evidence of any witness in the summary and his evidence at the trial, the summary must be annexed to the proceedings when so sent.

20. All erasures of written or printed matter, and all corrections should be initialed by the president.

21. Pages should be numbered consecutively up to the end of the proceedings, after they have been put together in the order prescribed.

22. Sufficient space should be left below the sentence and signature of the president for the minutes of confirmation and promulgation.

THIRD APPENDIX.

FORMS OF COMMITMENT.

FORM A.

Form of Order for commitment to Prison of Military Convict sentenced in the United Kingdom to Penal Servitude. App. III.
A.F. C 383.

Whereas [*Name—No.—Rank*], of the _____ regiment, was by general court-martial held at _____, convicted of the offence of _____ (a), and, by a sentence signed on the _____ day of _____ 19____, sentenced (b) to suffer penal servitude, for _____ years, commencing on the aforesaid day, and such sentence has been confirmed by _____, as required by law.*

*Add, if necessary, "with a remission of _____ years."

Now, therefore, I, the undersigned, the _____ do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said convict shall be, as soon as practicable, transferred to a prison in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined either permanently or temporarily, there to undergo his sentence according to law.

And I do hereby in pursuance of the above-mentioned Acts and powers order the governor or chief officer of any such prison to whom the convict is brought to receive him into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

Signed this _____ day of _____ 19____.

C.D.

FORM B.

Form of Order for commitment to prison of Military Convict sentenced in India, or a Colony, or a Foreign Country, to Penal Servitude. A.F. C 384.

Whereas [*Name—No.—Rank*], of the _____ regiment, was by a general court-martial held at _____, convicted of the offence of _____ (a), and by a sentence signed on the _____ day of _____ 19____, sentenced (b) to suffer penal servitude for _____ years, commencing on the aforesaid day, and such sentence has been confirmed by _____, as required by law.*

*Add, if necessary, "with a remission of _____ years."

(a) If there are several offences, state all of them. An offence should be stated in the words of the charge on which the convict was convicted, but if modified by the finding, as so modified; omitting the statement of particulars giving the details of time, place, and circumstances.

(b) Where the sentence was death, but has been commuted to penal servitude, substitute "to suffer death, and such sentence was confirmed by _____, as required by law, and was commuted to _____ years' penal servitude, commencing on the aforesaid day."

(M.L.)

2 T 2

App. III. Now, therefore, I, the undersigned, the _____ do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said convict shall be, as soon as practicable, transferred to a prison in the United Kingdom in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined, either permanently or temporarily, there to undergo his sentence according to law.

And I do hereby, in pursuance of the above-mentioned Acts and powers, order the governor or chief officer of any such prison as aforesaid to whom the convict is brought to receive him into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

And for the above purpose, I, the undersigned, do hereby further, in pursuance of the above-mentioned Acts and powers, order that the said convict be removed in military custody by [*here state route*], or such other route as may be directed by proper authority, to the port at _____ or such other port as may be directed by proper authority, thence to be removed by [*here state route*] to such prison as aforesaid in the United Kingdom.

And I do hereby, in pursuance of the above-mentioned Acts and powers, order the officer or non-commissioned officer in charge of any detention barrack, and also the governor or chief officer of any prison, military or civil, to whom the convict is brought, to receive the said convict, and detain him so long as appears reasonably necessary with the view to his said removal, and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed at _____ this _____ day of _____ 19 . . . C.D.

In case an Alteration of the Route above mentioned becomes necessary. (a)

Whereas for the purpose of better carrying into effect the above order for the removal of the above-mentioned convict to the United Kingdom, it is necessary to alter the route above-mentioned, I, the undersigned, the _____, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said convict be removed in military custody by [*here state the route so far as varied*] to _____, thence to be removed as directed by the said order.

Signed at _____ this _____ day of _____ 19 . . . E.F.

In case of need the following Order may be made.

For the purpose of carrying into effect the above order, I, the undersigned, being the _____, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order the governor or chief officer of _____ prison or detention barrack at _____, to receive the above-named convict, and to detain him until he can be removed to _____ and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed at _____ this _____ day of _____ 19 . . . G.H.

(a) This order can be repeated by any removing authority as often as necessary.

FORM C.

App. III.

Form of Order for Commitment to Prison, Military or Civil (or to a detention barrack), of persons subject to military law sentenced either in or out of the United Kingdom to Imprisonment.

A.F. C 385

To the governor or chief officer in charge of (a) prison (or detention barrack) at

Whereas [*Name—No.—Rank*], of the _____ regiment, was by a (b) court-martial held at _____ convicted of the offence of (c) _____, and by a sentence signed on the _____ day of 19 _____, sentenced (d) to be imprisoned with _____ *hard labour for _____, commencing on the aforesaid day, and such sentence has been confirmed by _____, as required by law (e).

*If the sentence does not specify hard labour alter "with" into "without."

Now, therefore, I, the undersigned, the

do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive the said person into your custody and detain him to undergo his said sentence according to law, and for so doing this shall be your warrant.

Signed at _____ this _____ day of _____ 19 _____.

G.H.

FORM D.

Form of Order for commitment to a detention barrack of persons subject to military law as soldiers, sentenced either in or out of the United Kingdom to Detention.

A.F. C 385A.

To the commandant or chief officer in charge of the detention barrack at

Whereas [*Name—No.—Rank*], of the _____ regiment, was by a (f) court-martial held at _____ convicted of the offence of (c) _____ and, by a sentence signed on the _____ day of _____ 19 _____, sentenced (g) to detention for _____

(a) Insert "His Majesty's," or as required according to title of prison.

(b) Insert "general" or "district" as required.

(c) If there are several offences, state all of them. An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place, and circumstances.

(d) Substitute, where the original sentence was death or penal servitude which has been commuted to imprisonment, "to suffer death, and such sentence has been confirmed by _____ as required by law, but has been commuted into imprisonment for _____, with _____ *hard labour, commencing on the aforesaid day," or "to suffer _____ years' penal servitude, and such sentence has been confirmed by _____ as required by law, and has been commuted into imprisonment for _____, with _____ *hard labour, commencing on the aforesaid day."

(e) Add, if necessary, "with a remission of _____," or "but has been mitigated by the omission of the hard labour," or as the case may be.

(f) Insert "general," "district," or "regimental," as required.

(g) Substitute, where the original sentence was death, penal servitude, or imprisonment, which has been commuted to detention, "to suffer death, and such sentence has been confirmed by _____ as required by law, but has been commuted into detention for _____ commencing on the aforesaid day," or "to suffer _____ years' penal servitude, and such sentence has been confirmed by _____ as required by law, and has been commuted into detention for _____ commencing on the aforesaid day," or "to be imprisoned with (or without) hard labour for _____ commencing on the aforesaid day, and such sentence has been commuted into detention for _____ commencing on the aforesaid day."

*If the commutation does not specify hard labour alter "with" into "without".

App. III.

commencing on the aforesaid day, and such sentence has been confirmed by _____ as required by law (a).

Now, therefore, I, the undersigned, being the do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive the said soldier into your custody and detain him to undergo his said sentence according to law, and for so doing this shall be your warrant.

Signed at _____ this _____ day of _____ 19 _____ G.H.

FORM E.

A.F. C 386. *Form of Order respecting Imprisonment under Sentence passed out of the United Kingdom and to be undergone in the United Kingdom.*

Whereas [Name—No.—Rank], of the _____ regiment, was by a (b) _____ court-martial held at _____ convicted of the offence of _____ (c), and by a sentence signed on the _____ day of _____ 19 _____, sentenced (d) to be imprisoned with _____ *hard labour for _____, commencing on the aforesaid day, and such sentence has been confirmed by _____, as required by law (e).

*If the sentence does not specify hard labour, alter "with" into "without."

Now, therefore, I, the undersigned, the

being the committing and removing authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said soldier shall be transferred and removed to _____ prison (or detention barrack) at _____ in the United Kingdom, or such other public prison or detention barrack in the United Kingdom as any other competent authority may appoint in this behalf, there to undergo his sentence according to law.

And I do hereby, in pursuance of the said Acts and powers, order the governor or chief officer of any such prison or detention barrack as aforesaid to whom the above soldier is brought, to receive the soldier into his custody and detain him accordingly and for so doing this shall be sufficient warrant.

And I do hereby, in pursuance of the said Acts and powers, further order that the said soldier shall be conveyed in military custody and detained in military custody or in a prison, military

(a) Add, if necessary, "with a remission of _____."

(b) Insert "general," or "district," as required.

(c) If there are several offences, state all of them. An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place, and circumstances.

(d) Substitute, where the original sentence was death or penal servitude which has been commuted to imprisonment, "to suffer death, and such sentence has been confirmed by _____ as required by law, but has been commuted into _____, with _____ *hard labour, commencing on the aforesaid day," or "to suffer _____ years' penal servitude, and such sentence has been confirmed by _____ as required by law, and has been commuted into _____, with _____ *hard labour, commencing on the aforesaid day."

*If the commutation does not specify hard labour alter "with" into "without."

(e) Add, if necessary, "with a remission of _____," or "but has been mitigated by the omission of the hard labour," or as the case may be.

or civil, or a detention barrack, so far as appears necessary or proper for effecting his removal to the said prison or detention barrack in the United Kingdom. App III.

Signed at this day of 19 .

H.I.

In case of a Committal to any intermediate Prison or Detention Barrack being necessary (a).

For the purpose of carrying into effect the above Order, I, the undersigned, the
do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order the governor or chief officer of the prison or detention barrack at , to receive the said soldier and detain him until he can be removed, in pursuance of the above order, and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed at this day of 19 .

I.K.

Order on arrival in United Kingdom of soldier sentenced to imprisonment.

I, the undersigned, the being the committing and removing authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order him to be transferred and removed to the prison or detention barrack at , to undergo his sentence according to law.

And I do hereby order the governor or chief officer of that prison or detention barrack to receive him, and for so doing this shall be sufficient warrant.

Signed at this day of 19 .

K.L.

(a) This order may be repeated as often as necessary by any authority having power to make it.

App. III.

FORM F.

A.F. O 386A. *Form of Order respecting detention under Sentence passed out of the United Kingdom and to be undergone in the United Kingdom.*

Whereas [*Name—No.—Rank*], of the _____ regiment was by a (*a*) _____ court-martial held at _____ convicted of the offence of (*b*) _____ and by a sentence signed on the _____ day of _____ 19 _____, sentenced (*c*) to detention for _____, commencing on the aforesaid day, and such sentence has been confirmed by _____ required by law (*d*).

Now, therefore, I, the undersigned, the

being the committing and removing authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said soldier shall be transferred and removed to _____ detention barrack at _____ in the United Kingdom or such other detention barrack in the United Kingdom as any other competent authority may appoint in this behalf, there to undergo his sentence according to law.

And I do hereby, in pursuance of the said Acts and powers, order the commandant or chief officer of any such detention barrack as aforesaid to whom the above soldier is brought to receive the soldier into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

And I do hereby, in pursuance of the said Acts and powers further order that the said soldier shall be conveyed in military custody and detained in military custody or in a detention barrack so far as appears necessary or proper for effecting his removal to the said detention barrack in the United Kingdom.

Signed at _____ this _____ day of _____ 19 _____.

E.F.

(*a*) Insert "general," "district," or "regimental," as required.

(*b*) If there are several offences state all of them. An offence should be stated in the words of the charge on which the soldier was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place, and circumstances.

(*c*) Substitute, where the original sentence was death, penal servitude, or imprisonment which has been commuted to detention, "to suffer death, and such sentence has been confirmed by _____ as required by law, but has been commuted into detention for _____, commencing on the aforesaid day," or "to suffer _____ years' penal servitude, and such sentence has been confirmed by _____ as required by law, and has been commuted into detention, for _____, commencing on the aforesaid day" or "to be imprisoned with (or without) hard labour for _____ commencing on the aforesaid day, and such sentence has been confirmed by _____ as required by law, and has been commuted into detention for _____ commencing on the aforesaid day."

(*d*) Add, if necessary, "with a remission of _____."

If the detention was awarded by the commanding officer, the form from Whereas "down to "required by law" will be replaced by the corresponding provision in Form "G."

In case of a Commitment to any intermediate Detention Barrack being necessary (a).

App. III.

For the purpose of carrying into effect the above Order, I, the undersigned, the

do hereby, in pursuance of the Army Act and of all other Acts and powers enabling me in this behalf, order the commandant or chief officer of the detention barrack at , to receive the said soldier, and detain him until he can be removed, in pursuance of the above Order, and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed at this day of 19 .

D.E.

Order on Arrival of Soldier in United Kingdom.

I, the undersigned, the

being the committing and removing authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order the said soldier to be transferred and removed to the detention barrack at to undergo his sentence according to law.

And I do hereby order the commandant or chief officer of that detention barrack to receive him, and for so doing this shall be sufficient warrant.

Signed at this day of 19 .

D.E.

FORM G.

Form of Commitment to Detention Barrack on award of Detention by Commanding Officer. A.F.C 388.

To the commandant or officer or non-commissioned officer in charge of the detention barrack at

Whereas [*Name—No.—Rank*], of the regiment, was on the day of 19 , awarded by his commanding officer detention for the offence of

Now, therefore, I, the undersigned, being the commanding officer of the said soldier, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive him into your custody to undergo his sentence according to law, and for so doing this shall be your warrant.

Signed at this day of 19 .

D.E.

(a) This order may be repeated as often as necessary by any authority having power to make it.

App. III.

FORM H.

A.F. C 389. *Order for Discharge of Persons subject to Military Law undergoing Imprisonment.*

To the governor, commandant, or chief officer of _____ prison
or detention barrack at _____

Whereas [*Name—No.—Rank*], of the _____ regiment, is now
in your custody under a sentence of imprisonment by court-
martial.

I, the undersigned, being _____ do hereby order
you to discharge the said soldier.

Signed at _____ this _____ day of _____ 19 .

E.F.

FORM I.

A.F. C 389A. *Order for Discharge of Persons subject to Military Law as Soldiers undergoing Detention.*

To the commandant or chief officer of the
detention barrack at _____

Whereas [*Name—No.—Rank*], of the _____ regiment,
is now in your custody under a sentence of detention by court-
martial.

I, the undersigned, being _____ do hereby order you to
discharge the said soldier.

Signed at _____ this _____ day of _____ 19 .

E.F.

FORM J.

A.F. C 390. *Form of Discharging Order in case of Detention under the Award of Commanding Officer.*

To the commandant or officer or non-commissioned officer in
charge of the detention barrack at _____

You are hereby required to discharge the soldier [*Name—
No.—Rank*], of the _____ regiment, now in your
custody undergoing his sentence pursuant to the award of his com-
manding officer.

Signed at _____ this _____ day of _____ 19 .

C.D.

Commanding Officer of the above Soldier.

FORM K.

App. III.

Order for Removal of Soldier undergoing Imprisonment to be brought before a Court. A.F. O 391.

To the governor or chief officer of _____ prison
or detention barrack at _____

Whereas [*Name—No.—Rank*], of the _____ regiment, is now in your custody undergoing a sentence of imprisonment passed by court-martial.

I, the undersigned, being _____ do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer bringing this order.

And I do hereby order the said officer or non-commissioned officer, and all other officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and bring him to there to appear before a (a) court-martial (b) as a witness, and then to return him to the above-named prison (or detention barrack), or to such other prison (or detention barrack) as may be determined by the proper authority, and to detain him in military custody until he is so returned or is discharged in due course of law, and for so doing this shall be sufficient warrant.

Signed at _____ this _____ day of _____ 19 .

C.D.

If the Prison (or Detention Barrack) to which he is returned is altered.

I, the undersigned, being the _____ do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that he be forthwith returned in military custody to _____ prison (or detention barrack) at _____ there to undergo the remainder of his sentence.

Signed at _____ this _____ day of _____ 19 .

C.D.

FORM L.

Order for Removal of Soldier undergoing detention to be brought before a Court. A.F. O 391A.

To the commandant or chief officer of the detention barrack at _____

Whereas [*Name—No.—Rank*], of the _____ regiment, is now in your custody, undergoing a sentence of detention _____

(a) If the facts so require, substitute "civil court."

(b) Substitute, according to the facts, "for trial," or state the other reasons for which he is to be brought.

App. III. passed by court-martial (a) ;

I, the undersigned, being the _____, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer bringing this order.

And I do hereby order the said officer or non-commissioned officer, and all other officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and bring him to _____, there to appear before a (b) court-martial (c) as a witness, and then to return him to the above-named detention barrack, or to such other detention barrack as may be determined by the proper authority, and to detain him in military custody until he is so returned, or is discharged in due course of law, and for so doing this shall be sufficient warrant.

Signed at _____ this _____ day of _____ 19 .

C.D.

If the Detention Barrack to which he is returned is altered.

I, the undersigned, being the _____ do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that he be forthwith returned in military custody to the detention barrack at _____, there to undergo the remainder of his sentence.

Signed at _____ this _____ day of _____ 19 .

C.D.

FORM M.

A.F. C 392. *Order for Removal of Soldier undergoing Imprisonment for Embarkation.*

To the governor or chief officer of _____ prison
(or detention barrack) at _____

Whereas [Name—No.—Rank], of the _____ regiment, is now in your custody undergoing a sentence of imprisonment passed by court-martial.

I, the undersigned, being the _____, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer presenting this order.

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said

(a) If necessary, substitute "awarded by his commanding officer."

(b) If the facts so require, substitute "civil court."

(c) Substitute, according to the facts, "for trial," or state the other reasons for which he is to be brought.

soldier in military custody and to convey him in military custody in such manner as may be directed by military authority to where the regiment to which he belongs is serving (a), and for so doing this shall be sufficient warrant. App. III.

Signed at this day of 19 . J.K.

FORM N.

Order for Removal of Soldier undergoing Detention for Embarkation. A.F. C 392A.

To the commandant or chief officer of the detention barrack at

Whereas [*Name—No.—Rank*], of the regiment, is now in your custody undergoing a sentence of detention passed by court-martial (b).

I, the undersigned, being the

do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer presenting this order.

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody and to convey him in military custody in such manner as may be directed by military authority to where the regiment to which he belongs is serving (a), and for so doing this shall be sufficient warrant.

Signed at this day of 19 . J.K.

FORM O.

Order for Removal of Soldier from one public Prison (or Detention Barrack) to another. A.F. C 393.

To the governor or chief officer of prison (or detention barrack) at

Whereas [*Name—No.—Rank*], of the regiment, is now in your custody undergoing a sentence of imprisonment passed by court-martial.

I, the undersigned, being the do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer presenting this order.

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose

(a) If necessary, substitute "under orders to serve."

(b) If necessary, substitute "awarded by his commanding officer."

App. III. custody the said soldier may be delivered, to keep the said soldier in military custody and convey him in military custody in such manner as may be directed by military authority, to the _____ prison (or detention barrack) at _____, there to undergo the remainder of his sentence, and for so doing this shall be sufficient warrant.

Signed at _____ this _____ day of _____ 19 .

D.E.

FORM P.

A.F. C 393A. *Order for Removal of a person subject to Military Law as a Soldier undergoing Detention from one Detention Barrack to another.*

To the commandant or chief officer of the detention barrack at _____

Whereas [*Name—No.—Rank*], of the _____ regiment, is now in your custody undergoing a sentence of detention passed by court-martial (a);

I, the undersigned, being the _____, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said soldier to the officer or non-commissioned officer presenting this order.

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said soldier may be delivered, to keep the said soldier in military custody, and convey him in military custody in such manner as may be directed by military authority, to the detention barrack at _____, there to undergo the remainder of his sentence, and for so doing this shall be sufficient warrant.

Signed at _____ this _____ day of _____ 19 .

D.E.

FORM Q (b).

A.F. C 396. *Form of order for temporary custody in Prison or Lock-up.*

To the governor or chief officer of _____ prison at _____ (c).

Whereas [*Name—No.—Rank*], of the _____ regiment, is now a soldier in military custody.

Now therefore I, the undersigned, the commanding officer of the said soldier, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive the said soldier into your custody and detain him until you receive a further order from me, but not longer than seven days, and for so doing this shall be your warrant.

Signed this _____ day of _____ 19 .

J.E.

(a) If necessary, substitute "awarded by his commanding officer."

(b) This form can be used only in the case of a soldier as defined by the Army Act.

(c) Substitute, if necessary, "officer in charge of the police station [or other place] at _____."

FORM R.

App. III.

Form of Commitment to Detention Barrack for safe custody while awaiting Trial by, or Sentence of, Court-Martial. A.F. B 72.

To the officer or non-commissioned officer in charge of the detention barrack at

Whereas [*Name—No.—Rank*], of the _____ regiment
[has been remanded for trial by court-martial] (a) or [was on the
day of _____ 19____, tried by court-martial for the
offence of _____],
and is awaiting [trial] (a) or [the promulgation of the finding
and sentence of the court].

Now, therefore, I, the undersigned, being the commanding officer of the said soldier, do hereby, in pursuance of the King's Regulations and Orders for the Army enabling me in this behalf, order you to receive him into your custody for safe custody, and for so doing this shall be your warrant.

You will take care that the said soldier wears his regimental clothing and necessaries, that he is allowed to exercise during a reasonable portion of each day in association, if possible, but that he is kept apart from soldiers undergoing sentences, and that he receives the ordinary rations and messing of a soldier. He should not be *obliged* to labour otherwise than by being employed in drill fatigue and other duties similar in kind and amount to those he might be called on to perform if not in confinement.

Signed at _____ this _____ day of _____ 19____.

(Signature)

FORM S.

Form of Discharging Order in case of Confinement in Detention Barrack for safe Custody while awaiting Trial by, or Sentence of, Court-Martial. A.F. B 91.

To the officer or non-commissioned officer in charge of the detention barrack at

You are hereby required to deliver over the soldier [*Name—No.—Rank*], of the _____ regiment, now in your custody for safe custody, pursuant to committal by his commanding officer, to the non-commissioned officer of the escort herewith attending to receive him.

Signed at _____ this _____ day of _____ 19____.

(Signature)

Commanding Officer of the above Soldier.

(a) NOTE.—The forms should be altered to meet cases of confinement before and after the trial respectively by erasing the words not applicable.

App. III.

FORM T.

A.F.
O 1797.

*Order for the Removal in Military Custody of a Deserter or Absentee
without leave awaiting Escort.*

To the governor or chief officer of _____ prison.

Whereas [*Name—No.—Rank*], of the _____ regiment,
is now in your custody as a deserter or absentee without leave
awaiting escort, I, the undersigned, being _____
do hereby order you to deliver the said prisoner to
the escort producing this authority.

Signed at _____ this _____ day of _____ 19 ____.

D.E.

FORM U.

*Form of Commitment of Person guilty of Contempt of a
Court-Martial under s. 28.*

To the officer or non-commissioned officer in charge of the
prison [*or detention barrack*] at _____

Whereas a court-martial for the trial of _____, of which I,
the undersigned, am president, was on this day sitting at _____
and _____ of the _____

Battalion, _____ Regiment, was guilty of contempt of
the court by using insulting language [*or by using threatening
language*], [*or by causing an interruption in the proceedings of such
court, or as the case may be*], namely by [*here describe the act of
which the offender was guilty*].

And whereas the said court did order the above-named offender
to be imprisoned [*or to undergo detention*] for _____ days.

Now, therefore, the court doth order you to receive the said
offender into your custody for safe custody, and for so doing this
shall be your warrant.

Signed at _____ this _____ day of _____ 19 ____

(Signature)

A.B., President of the above
Court-Martial.

Rules for Field Punishment.

RULES FOR FIELD PUNISHMENT MADE UNDER S. 44 OF THE ARMY ACT.

1. A court-martial, or a commanding officer, may award field F. P. Rules.
punishment for any offence committed on active service, and may
sentence an offender for a period not exceeding, in the case of a
court-martial three months, and in the case of a commanding officer
twenty-eight days, to one of the following field punishments
namely:—

- (a) Field punishment No. 1.
- (b) Field punishment No. 2.

2. Where an offender is sentenced to field punishment No. 1, he
may, during the continuance of his sentence, unless the court-
martial or the commanding officer otherwise directs, be punished as
follows:—

- (a) He may be kept in irons, i.e., in fetters or handcuffs, or
both fetters and handcuffs; and may be secured so as to
prevent his escape.
- (b) When in irons he may be attached for a period or periods
not exceeding two hours in any one day to a fixed object,
but he must not be so attached during more than three
out of any four consecutive days, nor during more than
twenty-one days in all.
- (c) Straps or ropes may be used for the purpose of these rules
in lieu of irons.
- (d) He may be subjected to the like labour, employment, and
restraint, and dealt with in like manner as if he were
under a sentence of imprisonment with hard labour.

3. Where an offender is sentenced to field punishment No. 2, the
foregoing rule with respect to field punishment No. 1 shall apply
to him, except that he shall not be liable to be attached to a fixed
object as provided by paragraph (b) of Rule 2.

4. Every portion of a field punishment shall be inflicted in such
a manner as is calculated not to cause injury or to leave any
permanent mark on the offender; and a portion of a field punish-
ment must be discontinued upon a report by a responsible medical
officer that the continuance of that portion would be prejudicial to
the offender's health.

5. Field punishment will be carried out regimentally when the
unit to which the offender belongs or is attached is actually on the
move, but when the unit is halted at any place where there is a
provost marshal, or an assistant provost marshal, the punishment
will be carried out under that officer.

6. When the unit to which the offender belongs or is attached is
actually on the move, an offender awarded field punishment No. 1
shall be exempt from the operation of Rule (2) (b), but all offenders

awarded field punishment shall march with their unit, carry their arms and accoutrements, perform all their military duties as well as extra fatigue duties, and be treated as defaulters.

(Signed) R. B. HALDANE.

29th June, 1907.

The foregoing rules are to be observed by the Royal Marine Forces when subject to the Army Act, until further rules are made in pursuance of Section 44 of the said Act.

(Signed) TWEEDMOUTH.

J. A. FISHER.

Admiralty,

9th July, 1907.

Forms of Court-Martial Warrants.

Warrants.

The following Forms are at present in use :—

I.—*Form of Warrant under the Sign-Manual empowering General Officers in command at home to convene General Courts-Martial.*

(Sign-Manual.)

In pursuance of the provisions of the Army Act.

We hereby authorise you, from time to time as occasion may require, to convene General Courts-Martial for the trial of any persons subject to Military Law as may for the time being be under or within the territorial limits of your Command who shall be charged with any offence against Military Discipline, whether such offence shall have been committed before or after you shall have taken upon yourself your Command. The said Courts-Martial shall be constituted, and shall proceed in the trial of the offenders, and in giving sentence and awarding punishment, according to the powers and directions contained in the said Act.

We are further pleased to order that the proceedings of every such Court-Martial shall be transmitted to the Judge-Advocate-General, in order that he may forward them to Our Secretary of State for War who will lay the same before Us for Our decision thereupon.

And for so doing, this shall be, to you, and all others whom it may concern, a sufficient Warrant and Authority.

Given at Our Court at _____ this
day of _____ 19
in the _____ Year of Our Reign.

By His Majesty's Command.

(Signature of Secretary of State.)

To

*The General
or Officer Commanding the Forces (Home).*

II.—*Form of Warrant under the Sign-Manual enabling Commander-in-Chief in India to convene and confirm the findings and sentences of General Courts-Martial.*

(Sign-Manual.)

In pursuance of the provisions of the Army Act.

We do hereby authorise you, from time to time, as occasion may require, to convene General Courts-Martial for the trial of any

person subject to Military Law as may for the time being be under Warrants. or within the territorial limits of your command, who shall be charged with any offence against the provisions of the said Act; and We hereby further authorise you to confirm the proceedings of any courts-martial, and to cause any sentence thereof to be put in execution, according to the provisions of the said Act.

And We do hereby further authorise you to direct your warrant to any Officer under your command, not under the rank of a Field Officer, giving him a general authority to convene General Courts-Martial for the trial, under the said Act, of any such persons subject to Military Law as are for the time being under or within the territorial limits of his command, whether the offences shall have been committed before or after such Officer shall have taken upon him his command, and also to exercise in respect of the proceedings of such courts-martial the power of confirming the findings or sentences thereof in accordance with the said Act; or if you should so think fit, of directing him to reserve for your confirmation the proceedings of all or any such courts-martial, in which case you are hereby authorised to exercise, in respect of the proceedings so reserved, all the powers of a confirming Officer in accordance with the said Act.

We also hereby authorise you in any case in which you shall think fit so to do, to transmit the proceedings of any General Court-Martial to the Judge-Advocate-General, in order that he may forward them to Our Secretary of State for War who will lay the same before Us for Our decision thereupon.

And that there may not in any case be a failure of justice from the want of a proper person authorised to act as Judge-Advocate, We do hereby further empower you, in default of a person appointed by Us, or deputed by the Judge-Advocate-General of Our Forces, or during the illness or occasional absence of the person so appointed or deputed, to nominate and appoint, and to delegate to any Officer duly authorised to convene a General Court-Martial, the power of appointing a fit person from time to time for executing the office of Judge-Advocate at any Court-Martial for the more orderly proceedings of the same.

And for enforcing the sentence of every such Court-Martial, We do also give you authority to appoint and to delegate to any Officer duly authorised to convene a General Court-Martial, the power of appointing a Provost-Marshal to use and exercise that office according to the provisions of the said Act.

And for executing the several powers, matters, and things herein expressed, these shall be to you, and all others whom it may concern, a sufficient Warrant and Authority.

Given at Our Court at this
day of 19
in the Year of Our Reign.

By His Majesty's Command.

(Signature of Secretary of State.)

To

*The General or Officer for the time being
Commanding in Chief
The Forces in the East Indies.*

NOTE.—The warrant for the Commander-in-Chief on active service often follows the above Form.

(M.L.)

2 z 2

Warrants. II.—*Form of Warrant under the Sign-Manual enabling General Officer Commanding the Forces in a Colony, or elsewhere out of the United Kingdom, except in India, to convene and confirm the finding and sentences of General Courts-Martial.*

(Sign-Manual.)

In pursuance of the provisions of the Army Act.

We do hereby authorise you, from time to time, as occasion may require, to convene General Courts-Martial for the trial of any person subject to Military Law as may for the time being be under or within the territorial limits of your Command who shall be charged with any offence against the said Act, whether such offence shall have been committed before or after you shall have taken upon yourself the Command; and We hereby further authorise you to confirm the proceedings of any such Courts-Martial, and to cause any sentence thereof to be put in execution, according to the provisions of the said Act.

And We do hereby further authorise you to direct your Warrant to any Officer under your command, not below the degree of a Field Officer, giving him a general authority to convene General Courts-Martial, for the trial, under the said Act, of any such persons subject to Military Law as are for the time being under or within the territorial limits of his Command, whether the offences shall have been committed before or after such Officer shall have taken upon him his Command, and also to exercise, in respect of the proceedings of such Courts-Martial, the power of confirming the findings or sentences thereof in accordance with the said Act; or, if you should so think fit, of directing him to reserve for your confirmation the proceedings of all or any such Courts-Martial, in which case you are hereby authorised to exercise, in respect of the proceedings so reserved, all the powers of a confirming Officer in accordance with the said Act.

Provided always, that if by the sentence of any General Court-Martial a Commissioned Officer, other than a native Commissioned Officer, has been sentenced to suffer Death, or Penal Servitude, or to be cashiered or dismissed from Our Service, you shall in such case, as also in the case of any other General Court-Martial in which you shall think fit so to do, transmit the proceedings to the Judge-Advocate-General, in order that he may forward them to Our Secretary of State for War, who will lay the same before Us, for Our decision thereupon.

Provided also that if by the sentence of any General Court-Martial a native Commissioned Officer has been sentenced to suffer Death or Penal Servitude or to be cashiered or dismissed from Our Service, you shall in such case require the proceedings to be reserved for your confirmation, or, if you shall so think fit, for transmission to the Judge-Advocate-General, in order that he may forward them to Our Secretary of State for War, who will lay the same before Us for Our decision thereupon.

And that there may not in any case be a failure of justice from the want of a proper person authorised to act as Judge-Advocate, We do hereby further empower you, in default of a person appointed by Us, or deputed by the Judge-Advocate-General of Our Forces, or during the illness or occasional absence of the person so appointed or deputed, to nominate and appoint, and to delegate to any Officer duly authorised to convene a General Court-Martial, the power of appointing a fit person from time to time

for executing the office of Judge-Advocate of any Court-Martial for Warrants.
the more orderly proceedings of the same.

And for enforcing the sentence of any such Court-Martial, We do also give you authority to appoint, and to delegate to any Officer duly authorised to convene a General Court-Martial, the power of appointing a Provost-Marshall to use and exercise that office according to the provisions of the said Act.

And for executing the several powers, matters, and things herein expressed, these shall be to you, and all others whom it may concern, a sufficient Warrant and Authority.

Given at Our Court at _____ this
day of _____ 19
in the _____ Year of Our Reign.

By His Majesty's Command,
(Signature of Secretary of State.)

To

*The General or Officer for the time being
Commanding the Forces at*

IV.—*Form of Warrant by Officer holding one of foregoing Warrants delegating to an Officer power to convene [and confirm] General Courts-Martial.*

Army Form A 1.

To

Whereas I am empowered by Warrant of His Majesty to direct my warrant to any Officer under my command, not below the degree of a Field Officer, giving him a general authority to convene General Courts-Martial for the trial under the Army Act, of any person under the command of such last-mentioned officer who is subject to Military Law, and also to execute (subject to the provisions of the said Warrant) in respect of the proceedings of such Courts-Martial, the power of confirming the findings or sentences thereof in accordance with the said Act, or of directing him to reserve for my confirmation the proceedings of all or any such Courts-Martial.

By virtue of the said Warrant, I do hereby authorise and empower you *[for the Officer on whom your command may devolve during your absence, not under the rank of Field Officer] from time to time, as occasion may require, to convene General Courts-Martial for the trial, in accordance with the said Act and the rules made thereunder, of any person under your command who is subject to Military Law and is charged with any offence mentioned in the said Act, and is liable to be tried by a General Court-Martial.

† And I do hereby empower you *[or the Officer on whom your command may devolve during your absence, not under the rank of Field Officer] to receive the proceedings of such Courts-Martial, and confirm the findings and sentences thereof, and to exercise, as respects these Courts and the persons tried by them, the powers created by the said Act of Parliament in the confirming Officer, in such manner as may be best for the good of His Majesty's Service.

† Provided always that if by the sentence of any General Court-Martial a Commissioned Officer has been sentenced to suffer Death, Penal Servitude, or to be cashiered or dismissed from the Service, you shall in such case, as also in the case of any other General Court-Martial in which you shall think fit so to do, withhold confirmation and transmit the proceedings to me.

* May be omitted.

† This clause to be omitted if the power of confirmation is wholly reserved.

Warrants. And that there may not in any case be a failure of justice from the want of a proper person authorised to act as Judge-Advocate, I hereby further empower you, in default of a person appointed by His Majesty, or deputed by the Judge-Advocate-General of His Majesty's Forces, or during the illness or occasional absence of the person so appointed or deputed, to nominate and appoint a fit person from time to time for executing the office of Judge-Advocate of any Court-Martial for the more orderly proceedings of the same.

And for so doing, this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

Given under my hand and seal at
this day of

Signature of }
General Officer }

By Command
Signature of }
Staff Officer }

V.—Form of Warrant by Officer holding one of foregoing Warrants delegating to an Officer power to convene District Courts-Martial.

Army Form A 5.

To

Whereas I am empowered by Warrant to convene General Courts-Martial, and whereas under the Army Act, any Officer or person authorised to convene General Courts-Martial may empower any person under his command not below the rank of Captain, to convene a District Court-Martial for the trial under that Act of any person under the command of such last-mentioned Officer who is subject to Military Law.

By virtue of the said Act and Warrant, I do hereby authorise and empower you *[or the Officer on whom your command may devolve during your absence, not under the rank of

] from time to time as occasion may require, to convene District Courts-Martial for the trial, in accordance with the said Act and the Rules made thereunder, of any person under your command, who is subject to Military Law and is charged with any offence mentioned in the said Act, and is liable to be tried by a District Court-Martial.

† And I do hereby empower you *[or the Officer on whom your command may devolve during your absence, not under the rank of] to receive the proceedings of such Courts-Martial, and confirm the findings and sentences thereof, and to exercise, as respects these Courts and the persons tried by them, the powers created by the said Act of Parliament in the confirming Officer, in such manner as may be best for the good of His Majesty's Service.

And for so doing, this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

Given under my hand and seal at
this day of

Signature of }
General Officer }

By Command.
Signature of }
Staff Officer }

* May be omitted or varied in accordance with the terms of the Army Act, s. 123.

† This clause to be omitted if the power of confirmation is wholly reserved.

Form of Application for a Court-Martial.

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Army Form B 116.

Army
Form
B 116.

Station

Regiment.

Date 19

Application for a

Court-Martial.

SIR,

I have the honour to submit Charge against No. _____
of the _____ under my command, and request you will obtain
the sanction of _____ that a _____ Court-
Martial may be assembled for his trial at _____

The case was investigated by§

A Court of Inquiry was held on the _____ day of _____ 19____
at _____ [insert name of station]**

President _____

Members { _____

Ranks, names, and corps.

The accused is now at _____
character is+++

His general

I beg to enclose the following documents :—

1. * Charge sheet (in duplicate).
2. † Summary of Evidence.
3. ‡ The regimental and [troop, squadron, battery, or company] conduct sheets of the accused.
4. † List of Witnesses for the prosecution, and defence (with their present stations).
5. † Statement as to character, and particulars of service of the accused (Army Form B 296) to be proved by

I have the honour to be,

SIR,

Your most obedient humble Servant,

Signature of
Commanding Officer. }

To

MEDICAL OFFICER'S CERTIFICATE.

I certify that No. _____ Regiment _____ is in a
state of health and _____ to undergo
Imprisonment, and with or without hard labour; and that his present
appearance and previous medical history both justify the belief,
that hard labour employment will neither be likely to originate
nor to reproduce disease of any description.

Signature of the Medical Officer

†† If the accused has elected to be tried under A.A. 46 (8) the fact should be recorded at the top of this form.

§ Here insert name of (a) officer who investigated charge, (b) company, &c., commander who made preliminary inquiry into case, and (c) officer who took down summary of evidence. (R.P. 19 (B) (iii).)

** To be filled in if there has been a Court of Inquiry respecting any matters connected with the charges, otherwise to be struck out.

††† To be filled in by the Commanding Officer.

* One copy to be sent to the president; one copy to be filed with the application for trial.

† To be sent to the president.

In cases of desertion, a statement as to whether the accused was apprehended or surrendered, should be included in the summary of evidence.

‡ (3), (4), and (5) to be returned to the officer commanding the unit of the accused with the notice of trial.

Order in
Council.
—

**Order in Council respecting Discipline on board
H.M.'s Ships as amended by Order in Council
dated 30th June, 1890.**

At the Court at Osborne House, Isle of Wight, the 6th day of
February, 1882.

PRESENT :

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS there was this day read at the Board a Memorial from the Right Honourable the Lords Commissioners of the Admiralty, dated the 3rd of February, 1882, in the words following, viz. :—

“WHEREAS by the 88th section of an Act passed in the 29th and 30th years of Your Majesty's reign, chapter 109, entitled An Act to make Provision for the Discipline of the Navy, it is enacted that Your Majesty's land forces, when embarked on board any of Your Majesty's ships, shall be subject to the provisions of that Act to such extent and under such regulations as Your Majesty by Order in Council shall direct ;

“And whereas under Articles 1172, 1173, and 1174 of the Regulations for the Government of Your Majesty's Naval Service, established under Your Majesty's Order in Council dated the 4th day of February, 1879, certain rules were laid down for the discipline of Your Majesty's land forces when embarked as passengers in any of Your Majesty's ships ;

“And whereas we, having had the said rules under our careful consideration, are humbly of opinion that it would be for the advantage of Your Majesty's Service that the said rules should be amended, we therefore beg leave to recommend that Your Majesty will be graciously pleased by Your Order in Council to direct that the said rules shall be cancelled, and that the following Regulations shall be established in lieu thereof :—

“1. Whenever any of Your Majesty's land forces shall be embarked as passengers in any of Your Majesty's ships, the officers and soldiers shall, from the time of embarkation, strictly observe the laws and regulations established for the government and discipline of Your Majesty's Navy, and shall, for these purposes, be under the command of the commanding officer of the ship, as well as of the senior naval officer present ; and all military officers or other persons under the equivalent rank of Captain of your Majesty's Navy taking passages, and all military officers in actual command for the time being of any of the troops embarked, through whom orders to the troops (given by the officer of the watch) are required to pass, shall be under the command of the officer of the watch.

“2. Any act against the good order and discipline of the ship shall be deemed an act to the prejudice of good order and military discipline under the 40th section of the Army Act, 1881, unless the breach of discipline constitutes some other military offence for which provision is otherwise made in the said Act.

"3. Whenever an officer or soldier commits any act against the good order and discipline of the ship, the commanding officer of the ship may, by his own authority, and without reference to any other person, cause him to be put under arrest or confined as a close prisoner; and may, if he thinks the case requires it, order the prisoner to be disembarked at the first convenient opportunity, transmitting a report in writing, through the senior naval officer present, to the senior military officer in command of the land forces, in order that the offender may be brought before a military court-martial.

"4. The commanding officer of the ship shall have full power, on his own authority to order an offender, whether officer or soldier, to be placed in either naval or military custody, as he shall consider most desirable, observing that in all cases where an offender is to be disembarked for trial by military authority, he must be placed in military custody on board the ship.

"5. If any officer or soldier commits any act which, in the opinion of the commanding officer of the troops, can only be adequately dealt with by a general or district court-martial, the offender shall, with the concurrence of the commanding officer of the ship, be disembarked on the first opportunity for the purpose of being proceeded against according to military law.

"6. If any private soldier shall commit any act against the good order and discipline of the ship, which in the opinion of the commanding officer of the ship requires the infliction of any summary punishment for which a warrant is required by the Summary Punishment Table attached hereto, and which he is hereby authorised to award, the commanding officer of the ship shall confer with the commanding officer of the troops as to the nature and amount of such punishment, if any, to be inflicted, and on their concurrence the commanding officer of the ship shall, by warrant under his hand, which should also bear the signature of the officer commanding the troops as concurring, sentence the offender to suffer such punishment accordingly. In the event of the commanding officer of the troops not concurring with the commanding officer of the ship, the commanding officer of the ship is to cause the offender to be placed under arrest or confined as a close prisoner, until the case can be referred to superior military authority.

"7. If any non-commissioned officer shall commit an offence which, in the opinion of the commanding officer of the ship and the officer commanding the troops, does not require trial by general or district court-martial, the commanding officer of the ship may, by an order in writing, authorise the officer commanding the troops to convene a regimental court-martial for the trial of such non-commissioned officer, and thereupon the trial may proceed, and the finding and sentence may be confirmed in all respects as if the court had been convened and the sentence had been passed in the United Kingdom.

"Provided that no sentence of any such regimental court-martial shall be carried into execution on board any of Your Majesty's ships until the commanding officer of the ship has, by an order in writing, expressed his concurrence in the said sentence, and directed that it may be carried into effect.

"If the commanding officer of the ship shall see fit to withhold the last-named order in writing, the confirming officer shall suspend the execution of the sentence until the disembarkation of the prisoner.

"Whenever such regimental court-martial is held on board, the

Order in Council. — captain of the ship is to report immediately by special letter on each case to the Admiralty, a copy of which letter shall accompany the quarterly returns of punishment.

"8. The commanding officer of the troops, on his taking command of the troops embarked, will receive from the captain of the ship authority under his hand, and in the established form, to award such summary punishments as are specified in the Summary Punishment Table for the military, but such authority will not deprive the captain of his right to withdraw the original authority given; in the latter case, however, he should report to the Admiralty the circumstances which induced him to deviate from the general rule.

"9. All orders to the troops are, so far as may be practicable, to be given through their own officers and non-commissioned officers, and the commanding officer of the ship is to bear in mind that although the discipline of all on board is under his entire control, he is nevertheless to leave the troops to the management of their own officers, so far as may be consistent with the order and discipline of the ship.

"10. In special and exceptional cases, where the commanding officer of the ship may deem it necessary for the good order or discipline of the ship to give such orders as may interfere with existing regulations, or may affect the internal economy and discipline of the troops embarked, he is to make a special report of the circumstances to the Admiralty.

"11. When any soldiers of Your Majesty's land forces are embarked as passengers in any of Your Majesty's ships, and there is no commissioned officer of the land forces on board, the commanding officer of the ship shall possess and may exercise in regard to any such soldiers all the powers conferred upon him by Article 6 in the case of private soldiers without conferring with or obtaining the concurrence or signature of any officer of Your Majesty's land forces.

"12. All summary punishments for soldiers embarked on board Your Majesty's ships shall be in strict accordance with the Summary Punishment Table appended to this Order in Council. (a)

"13. Military convicts and military prisoners when embarked on board Your Majesty's ships for passage shall be kept in military custody.

"Your Majesty's Secretary of State for War and his Royal Highness the Field Marshal Commanding-in-Chief have signified to us their concurrence in these proposals."

SUMMARY PUNISHMENT TABLE. (a)

* * * *

HER MAJESTY, having taken the said Memorial into consideration, was pleased, by and with the advice of Her Privy Council, to approve of what is therein proposed. And the Right Honourable the Lords Commissioners of the Admiralty are to give the necessary directions herein accordingly.

C. L. PEEL.

(a) This table, as amended, is set out in the Schedule to the Order of 1912, below.

Order in Council amending the above Order.**Order in
Council.**

At the Court at Buckingham Palace, the 13th day of
February, 1912.

PRESENT :

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS there was this day read at the Board a Memorial from the Right Honourable the Lords Commissioners of the Admiralty, dated the 8th day of February, 1912, in the words following, viz.:—

“**WHEREAS** by Section 88 of the Naval Discipline Act it is enacted that Your Majesty's land forces when embarked on any of Your Majesty's Ships shall be subject to the provisions of that Act to such extent and under such regulations as Your Majesty by Order in Council shall direct :

“And whereas by Orders in Council bearing date the 6th day of February 1882 and the 30th day of June 1890 certain regulations were established for the discipline of Your Majesty's land forces when embarked as passengers in any of Your Majesty's Ships together with tables of summary punishments for private soldiers and of punishments for non-commissioned officers who may commit any act against the good order and discipline of the ship in which they are embarked :

“And whereas the punishment of detention may now be inflicted in Your Majesty's Navy :

“We beg leave humbly to recommend that Your Majesty may be graciously pleased by Your Order in Council to sanction the inclusion of this punishment in the aforesaid table of summary punishments for private soldiers embarked in Your Majesty's Ships as shown in the annexed schedule.

“The Army Council have signified their concurrence in this proposal.

Order in
Council.

“SCHEDULE.

“DESCRIPTION of SUMMARY PUNISHMENTS to be awarded to PRIVATE SOLDIERS when embarked in
His Majesty's SHIPS.

Number of Troop Punishments.	Authorised Summary Punishments for Private Soldiers.	By whom to be Awarded.	If Warrant required.	Military Equivalent.	Remarks.
1	Imprisonment, with or without hard labour (not to exceed 42 days).	Captain	Yes	...	...
1a	Detention (not to exceed 42 days)	...	...	...	...
2	Confinement in a cell (not to exceed 14 days)...	Captain	Yes	...	...
3	Stoppages in conformity with the Army Act, s. 138 (3) and (4).	Captain	Yes	...	...
4	Stoppage of smoking. Eating meals under sentry's charge. Half an hour to dinner. Not exceeding three hours' Pack Drill, if weather permits: if not, to Parade without Packs. To stand for two hours on deck from 6 to 8 p.m. Answer Roll Call every Bell between Morning Parade and 6 p.m. ...	{ Officer commanding the Troops.	No	...	...
5	Stoppage of smoking. Answer Roll Call every Bell from Morning Parade till 6 p.m. ...	Ditto	No	...	...
6	Stoppage of smoking not to exceed 28 days. Answer Roll Call four times daily.	Ditto	No	...	...
7	Fines for Drunkenness, as provided for in King's Regulations and Orders for the Army.	Ditto	No	...	...
8	Extra Guards for Slackness. Inattention on Guard, as in King's Regulations for the Army.	Ditto	No	...	...

Minor Summary Punishments.

Order in
Council.**"DESCRIPTION of PUNISHMENT to be awarded to Non-COMMISSIONED OFFICERS when embarked in HIS MAJESTY'S SHIPS.**

Authorised Punishments for Non-Commissioned Officers.	By whom to be Awarded.	Authority required.	Military Effect.	Remarks.
Reduction ... Fines and ... Stoppages ...	Regimental Court-Martial.	Captain's concurrence by order in writing.	Regimental Court-Martial Conviction.	Whenever a Regimental Court - Martial is authorised to be held, the Court will sit on some convenient place on the Main Deck screened off for the purpose, or other convenient place.

NOTE.—A Private Soldier may be admonished, and a Non-Commissioned Officer reprimanded by the Officer Commanding the Troops."

HIS MAJESTY, having taken the said Memorial into consideration, was pleased, by and with the advice of His Privy Council, to approve of what is therein proposed. And the Right Honourable the Lords Commissioners of the Admiralty are to give the necessary directions herein accordingly.

ALMERIC FITZROY.

PART III.

MISCELLANEOUS ENACTMENTS, REGULATIONS AND FORMS.

Part III contains the whole or parts of :—

The Railway Regulation Act, 1842.

1844.

The "Regulation" of the "Forces Act, 1871.

The Cheap Trains Act, 1883.

The National Defence Act, 1888.

The Reserve Forces Act, 1882.

1890.

The "Reserve Forces and Militia Act, 1898.

The Reserve Forces Act, 1899.

" " " 1900.

1906.

The "Territorial and Reserve Forces Act, 1907.

The Officers Commissions Act, 1862.

The Local Government Act, 1888.

The Regimental Debts Act, 1893.

Regulations thereunder.

Royal Warrant, Soldiers Effect Fund.

The Friendly Societies Act, 1896.

The Official Secrets Act, 1911.

The Railway Regulation Act, 1842.

[5 & 6 Vict. c. 55.]

Extract from

An Act for the better Regulation of Railways, and for the Conveyance of Troops.

[30th July, 1842.]

20. Whenever it shall be necessary to move any of the officers or soldiers of Her Majesty's forces of the line, ordnance corps, marines, militia, or the police force by any railway, the directors thereof shall and are hereby required to permit such forces respectively, with their baggage, stores, arms, ammunition, and other necessaries and things, to be conveyed at the usual hours of starting, at such prices or upon such conditions as may from time to time be contracted for between the Secretary at War and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance signed by the proper authorities. (a)

Railway companies shall convey military and police forces at prices to be settled.

(a) This section is repealed, except as to Ireland, and except as respecting the conveyance of forces by companies which lose the benefit of the Cheap Trains Act, 1883 (46 & 47 Vict. c. 34.) See s. 6 of that Act below. This section has been applied to the territorial force by T.B.F. Act and Order in Council, dated 19th March, 1908.

The Railway Regulation Act, 1844.

[7 & 8 VICT. c. 85.]

Extract from

An Act to attach certain Conditions to the Construction of future Railways authorised or to be authorised by any Act of the present or succeeding Sessions of Parliament; and for other purposes in relation to Railways. [9th August, 1844.]

Certain companies to convey military and police forces at certain charges. 5 and 6 Vict. c. 55.

12. And whereas by the Railway Regulation Act, 1842, it was, among other things, enacted that, whenever it shall be necessary to move any of the officers or soldiers of Her Majesty's forces of the line, ordnance corps, marines, militia, or the police force, by any railway, the directors thereof shall and are hereby required to permit such forces respectively, with their baggage, stores, arms, ammunition, and other necessities and things, to be conveyed at the usual hours of starting, at such prices or upon such conditions as may from time to time be contracted for between the Secretary at War and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance signed by the proper authorities: And whereas it is expedient to amend such provision in regard to the prices and conditions of conveyance by any new railway or any railway obtaining new powers from Parliament: Be it enacted, that all railway companies which have been or shall be incorporated by any Act of the present or any future session, or which by any Act of the present or any future session shall have obtained or shall obtain any extension or amendment of the powers conferred by their previous Acts or any of them, or have been or shall be authorised to do any act unauthorised by the provisions of such previous Acts, shall be bound to provide such conveyance as aforesaid for the said military, marine, and police forces, at fares not exceeding twopence per mile for each commissioned officer proceeding on duty, such officer being entitled to conveyance in a first-class carriage, and not exceeding one penny for each mile for each soldier, marine, or private of the militia or police force, and also for each wife, widow or child above twelve years of age of a soldier entitled by Act of Parliament or by competent authority to be sent to their destination at the public expense, children under three years of age so entitled being taken free of charge, and children of three years of age or upwards, but under twelve years of age, so entitled, being taken at half the price of an adult; and such soldiers, marines, and privates of the militia or police force, and their wives, widows, and children so entitled, being conveyed in carriages which shall be provided with seats, with sufficient space for the reasonable accommodation of the persons conveyed, and which shall be protected against the weather; provided that every officer conveyed shall be entitled to take with him one hundredweight of personal luggage without extra charge, and every soldier, marine, private, wife, or widow shall be entitled to take with him or her half a hundred-weight of personal luggage without extra charge, all excess of the above weights of personal luggage being paid for at the rate of not more than one halfpenny per pound, and all public baggage, stores, arms, ammunition, and

other necessities and things (except gunpowder and other combustible matters, which the company shall only be bound to convey at such prices and upon such conditions as may be from time to time contracted for between the Secretary at War and the Company), shall be conveyed at charges not exceeding twopence per ton per mile, the assistance of the military or other forces being given in loading and unloading such goods. (a)

The Regulation of the Forces Act, 1871. (b)

[34 & 35 VICT., c. 86.]

Extract from

An Act for the better Regulation of the Regular and Auxiliary Land Forces of the Crown; and for other purposes relating thereto. [17th August, 1871.]

PART II.—AUXILIARY FORCES.

All officers in the * * yeomanry and volunteers of England, Scotland, and Ireland shall hold commissions from Her Majesty, and such (c) commissions shall be prepared, authenticated, and issued in the manner in which commissions of officers in Her Majesty's land forces are prepared, authenticated, and issued according to any law or custom for the time being in force

Jurisdiction of Lieutenants of counties in respect of auxiliary forces re-vested in Her Majesty.

PART IV.—MISCELLANEOUS AND DEFINITIONS.

16. When Her Majesty, by Order in Council, declares that an emergency has arisen in which it is expedient for the public service that Her Majesty's Government should have control over the railroads in the United Kingdom, or any of them, the Secretary of State may by warrant under his hand empower any person or persons named in such warrant to take possession in the name or on behalf of Her Majesty of any railroad in the United Kingdom, and of the plant belonging thereto, or of any part thereof, and may take possession of any plant without taking possession of the railroad itself, and to use the same for Her Majesty's service at such times and in such manner as the Secretary of State may direct; and the directors, officers, and servants of any such railroad shall obey the directions of the Secretary of State as to the user of such railroad or plant as aforesaid for Her Majesty's service.

Power of Government on occasion of emergency to take possession of railroads.

Any warrant granted by the said Secretary of State in pursuance of this section shall remain in force for one week only, but may be renewed from week to week so long as, in the opinion of the said Secretary of State, the emergency continues.

There shall be paid to any person or body of persons whose railroad or plant may be taken possession of in pursuance of this section, out of moneys to be provided by Parliament, such full compensation for any loss or injury they may have sustained by the exercise of the powers of the Secretary of State under this section

(a) This section is repealed, except as to Ireland, and except as respecting the conveyance of forces by companies which lose the benefit of the Cheap Trains Act, 1883. (46 and 47 Vict. c. 24.) See s. 6 of that Act below. This section has been applied to the territorial force by T.R.F. Act and Order in Council, dated 19th March, 1908.

(b) Parts of this Act still in force have been omitted, as unnecessary for general reference.

(c) The words from "such commissions" onwards have been applied to the territorial force by the T.R.F. Act and Order in Council of March 19, 1908.

as may be agreed upon between the said Secretary of State and the said person or body of persons, or, in case of difference, may be settled by arbitration in manner provided by "The Lands Clauses Consolidation Act, 1845."

Where any railroad or plant is taken possession of in the name or on behalf of Her Majesty in pursuance of this section, all contracts and engagements between the person or body of persons whose railroad is so taken possession of and the directors, officers, and servants of such persons or body of persons, or between such person or body of persons and any other persons in relation to the working or maintenance of the railroad, or in relation to the supply or working of the plant of such railroad, which would, if such possession had not been taken, have been enforceable by or against the said person or body of persons, shall during the continuance of such possession be enforceable by or against Her Majesty.

For the purposes of this section "railroad" shall include any tramway, whether worked by animal or mechanical power, or partly in one way and partly in the other, and any stations, works, or accommodation belonging to or required for the working of such railroad or tramway.

"Plant" shall include any engines, rolling stock, horses, or other animal or mechanical power, and all things necessary for the proper working of a railroad or tramway which are not included in the word "railroad."

Definitions.

19. In this Act if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say:—

"Officer" means "commissioned officer."

Interpreta-
tion of cer-
tain terms
in the Act.

Cheap Trains Act, 1883.

[46 & 47 VICT., c. 34.]

Extract from

An Act to amend the Law relating to Railway Passenger Duty, and to amend and consolidate the Law relating to the conveyance of the Queen's Forces by Railway. [20th August, 1883.]

Convey-
ance of the
Queen's
forces at
reduced
rates.

6. (1) For the purposes of moving by railway on any occasion of the public service—

- (a) any of the officers or men in or belonging to Her Majesty's navy, or royal naval volunteers, and any other officers or men under the command or government of the Admiralty; and
 - (b) any of the officers or soldiers in Her Majesty's regular reserve or auxiliary forces (within the meaning of the Army Act, 1881, or any Act amending the same) for the time being subject to military law; and
 - (c) any officers or men of any police force;
- (all and any of which officers, soldiers, and men are in this Act called the "forces");

44 and 46
Vict. c. 57.

every railway company shall, on the production of a route duly signed for the conveyance of the forces, provide conveyance for them and their personal luggage, and also for any public baggage, stores, arms, ammunition, and other necessities and things, whether actually accompanying the forces or not, at all usual times at which passengers are conveyed by the company, on such terms as may be agreed on between the railway company and the Secretary of State, Admiralty, or police authority and subject to or in default of agreement on the following terms:—

- (i.) The passenger carriages provided shall be of such classes in use on the railway, and in such proportions, as specified in the route, all carriages being protected from the weather and having proper accommodation :
 - (ii.) The fares shall not exceed the following proportions of the fares charged to private passengers for the single journey by ordinary train in the respective classes of carriages specified in the route, that is to say, if the number of persons conveyed is less than one hundred and fifty, three-fourths ; and if the number is one hundred and fifty or more, then for the first one hundred and fifty, three-fourths, as for four officers and one hundred and forty-six soldiers or other persons ; and for the numbers in excess of the said one hundred and fifty, one half :
 - (iii.) This section shall apply to such wives, widows, and children of members of the forces as are entitled to be conveyed at the public expense, in like manner as if they were part of the forces, but children less than three years old shall be conveyed free of charge, and the fare for a child more than three and less than twelve years old shall be half the fare payable under this section for an adult :
 - (iv.) One hundredweight of personal luggage shall be conveyed by the railway company free of charge for every one conveyed under this section, who is required by the route to be conveyed first-class, and half a hundredweight for every other person conveyed ; and any excess of weight shall be conveyed at not more than two-thirds of the rate charged to the public for excess luggage :
 - (v.) The said public baggage, stores, arms, ammunition, necessities, and things shall be carried at rates not exceeding twopence per ton per mile, the assistance of the forces to be given when available in loading and unloading the same :
 - (vi.) Provided that the company shall not be bound under this section to carry gunpowder or other explosive or combustible matters except on terms agreed upon between the company and the Admiralty or one of Her Majesty's Principal Secretaries of State, as the case may be.
- (2.) For the purposes of this section a route duly signed shall be deemed to be a route issued and signed in accordance with section one hundred and three of the Army Act, 1881, or an order signed by a person authorised in this behalf by one of Her Majesty's Principal Secretaries of State, or a route or order signed by a person authorised in this behalf by the Admiralty, or, as regards the police, a route or order signed by a person authorised in this behalf by the police authority.
- (3.) Fares payable under this section shall be exempt from passenger duty.
- (4.) Where a company has by refusal or neglect to comply with an order of the Board of Trade or the Railway Commissioners lost

the benefit of this Act, that company shall, until its compliance is certified as in this Act provided, be exempt from the provisions of this section, but shall be bound to convey all such persons and things as mentioned in this section on the same terms as if this Act had not been passed.

11. This Act shall not extend to Ireland. (a)

National Defence Act, 1888.

[51 & 52 VICT., c. 31.]

Extract from

An Act to make better provision respecting National Defence.

[13th August, 1888.]

Power of Government, on occasion of national danger, or great emergency, to have precedence in traffic of railway.

4.—(1.) Whenever an order for the embodiment of the Militia (b) is in force, it shall be lawful for Her Majesty the Queen, by order signified under the hand of a Secretary of State, to declare that it is expedient for the public service that traffic for naval and military purposes shall have on the railways in the United Kingdom, or such of them as is mentioned in the order, precedence over other traffic.

(2.) When any such order is in force as respects a railway an officer of any part of Her Majesty's naval or military forces acting under the authority of a Secretary of State or the Admiralty may, by warrant under his hand addressed to the railway company working that railway, require that such traffic as may be specified in the warrant shall be received and forwarded on the railway in priority to any other traffic, and the company shall comply with such warrant, and shall, so far as may be necessary, suspend the receiving and forwarding of all other traffic on such railway.

(3.) If a director of or person employed by a railway company refuses or fails to comply with the exigency of the warrant, or obstructs the carrying thereof into effect, he shall be liable on summary conviction to a fine not exceeding fifty pounds, and any such officer as aforesaid may take such means as seem to him necessary for carrying (and if need be, by force) the warrant into effect.

(4.) A warrant issued in pursuance of this section shall not be in force for more than one month after the date thereof unless renewed.

(5.) An order made by Her Majesty in pursuance of this section may be revoked by Her Majesty at any time, and upon the Militia being ordered to be disembodied shall cease to operate.

(6.) There shall be paid, out of moneys provided by Parliament, to a railway company required to receive and forward traffic in pursuance of this section, such reasonable remuneration as may be agreed upon, or in default of agreement may be determined by arbitration.

(a) As to Ireland, see the Railway Regulation Acts, 1843 and 1844, *supra*.

(b) This is applied to the Territorial Force by the T.R.F. Act and Order in Council, dated March 16, 1908.

(7.) If any person suffers any loss by reason of anything done under the authority of a Secretary of State or the Admiralty in pursuance of this section, he may petition the Secretary of State or the Admiralty for compensation, and the Secretary of State or Admiralty may pay out of moneys provided by Parliament such reasonable compensation as may seem just; but no such compensation shall be paid in respect of any loss arising under a contract which was made subsequently to the date of an order under this section, or which, though made before, might have been determined subsequently to that date.

(8.) For the purposes of this section—

The expression "railway" includes any tramway, whether worked by animal or mechanical power, or partly in one way and partly in the other; and

The expression "person" includes any person or body of persons, corporate or unincorporate; and

The expression "railway company" means any person as above defined who as owner or lessee of a railway or otherwise is actually engaged in working a railway; and

The expression "traffic" includes persons, animals, goods, and things of every description which are ordinarily carried, or are required by virtue of this Act to be received and forwarded, on a railway.

Reserve Forces Act, 1882.

[45 & 46 Vict. c. 48.]

An Act to consolidate the Acts relative to the Reserve Forces.

[18th August, 1882.]

PART I.—ARMY RESERVE.

3. It shall be lawful for Her Majesty to keep up a force in the United Kingdom, called the army reserve, to consist of two classes, as follows:—

Establishment of army reserve.

Class I.—The first class shall consist of such number of men as may from time to time be provided by Parliament, and shall be liable, when called out on permanent service, to serve either in the United Kingdom or elsewhere, and shall consist of men who, having served in any of Her Majesty's regular forces, may either be transferred to the reserve in pursuance of the Army Act, 1881, or be enlisted or re-engaged in pursuance of this Act.

For the purpose of establishing a supplemental reserve it shall be lawful for Her Majesty to direct that the first class of the army reserve shall consist of two divisions; [and in the event of such direction being given, men in the second division shall not be liable to be called out on permanent service until directions have been given for calling out the whole of the first division on such service (a)].

(a) Words in brackets repealed by sec. 1 of the Reserve Forces Act, 1900 (63 & 64, Vict. c. 42), but the repeal is not to affect men who entered the second division before the 6th August, 1900, except with their consent; inasmuch, however, as enlistment in Section D is only for four years, the saving has now ceased to have any operation, and all men in the second division can now be called out on permanent service notwithstanding that directions have not been given for calling out the first division. See p. 751.

Class II.—The second class shall consist of such number of men as may from time to time be provided by Parliament and shall be liable, when called out on permanent service, to serve in the United Kingdom only, and shall consist of men who—

- (a) being out-pensioners of Chelsea Hospital, or (on account of service in the Royal Marines) out-pensioners of Greenwich Hospital; or
- (b) having served in any of Her Majesty's regular forces for not less than the full term of their original enlistment, may be enlisted or re-engaged in pursuance of this Act.

Procedure and term of service on enlistment or re-engagement.

4. Every man who enters the army reserve—

- (a) If he enters otherwise than by transfer to the reserve in pursuance of the Army Act, 1881, shall be enlisted; and
- (b) If he is re-engaged in the army reserve, shall be re-engaged, in such manner, and for a term of such length, and to begin at such date, as may be prescribed.

Calling out army reserve in aid of the civil power.

5. (1.) It shall be lawful for a Secretary of State, at any time when occasion appears to require, to call out the whole or so many as he thinks necessary of the men belonging to the army reserve, to aid the civil power in the preservation of the public peace.

(2.) It shall be lawful for any officer commanding Her Majesty's forces in any town or district, on the requisition in writing of any justice of the peace, to call out for the purpose aforesaid the men belonging to the army reserve who are resident in such town or district, or such of them as he may think necessary.

(3.) Any power by this section vested in a Secretary of State may, as regards men resident in Ireland, be exercised also by the Lord Lieutenant.

Punishment of certain offences by army reserve men.

6. (1.) Where a man belonging to the army reserve—

- (a) Fails without reasonable excuse on two consecutive occasions to comply with the orders or regulations in force under this Act with respect to the payment of the army reserve; or
- (b) When required by or in pursuance of the orders or regulations in force under this Act to attend at any place, fails without reasonable excuse to attend in accordance with such requirement; or
- (c) Uses threatening or insulting language, or behaves in an insubordinate manner to any officer or warrant or non-commissioned officer who in pursuance of the orders or regulations in force under this Act is acting in the execution of his office, and who would be the superior officer of such man if such man were subject to military law; or
- (d) By any fraudulent means obtains or is accessory to the obtaining of any pay or other sum contrary to the orders or regulations in force under this Act; or
- (e) Fails without reasonable excuse to comply with the orders or regulations in force under this Act,

he shall be guilty of an offence.

(2.) A man belonging to the army reserve who commits an offence under this section, whether otherwise subject to military law or not, shall be liable as follows; that is to say:—

- (a) Be liable to be tried by court-martial, and on conviction to suffer imprisonment, or such less punishment as is in the Army Act, 1881, mentioned; or
- (b) Be liable to be convicted by a court of summary jurisdiction, and to be sentenced to a fine of not less than forty

shillings and not more than twenty-five pounds, and in default of payment to imprisonment, with or without hard labour, for any term not less than seven days, and not more than the maximum term allowed by law for non-payment of the fine ;

and may in any case be taken into military custody.

(3.) Where a man belonging to the army reserve commits in the presence of any officer any offence under this section, or any offence under sub-section two or sub-section three of section one hundred and forty-two of the Army Act, 1881 (relating to the punishment of personation), that officer may, if he thinks fit, order such man, in lieu of being taken into military custody, to be taken into custody by any constable, and brought before a court of summary jurisdiction for the purpose of being dealt with by that court.

(4.) A certificate purporting to be signed by an officer who is therein mentioned as an officer appointed to pay a man belonging to the army reserve, and stating that such man has failed on two consecutive occasions to comply with the orders or regulations in force under this Act with respect to the payment of the army reserve, shall, without proof of the signature or appointment of such officer, be evidence of such failure.

(5.) Where a man belonging to the army reserve is required by or in pursuance of the orders or regulations in force under this Act to attend at any place, a certificate purporting to be signed by an officer or person who is mentioned in such certificate as appointed to be present at such place for the purpose of inspecting men belonging to the army reserve, or for any other purpose connected with such reserve, and stating that the man failed to attend in accordance with the said requirement, shall, without proof of the signature or appointment of such officer or person, be evidence of such failure.

7. A man belonging to the army reserve shall not be liable to serve the office of constable, or any other parochial, township, or borough office.

Men exempt from parish offices, &c.

PART II.—MILITIA RESERVE (a).

PART III.—GENERAL.

Annual Training and Calling out on Permanent Service of Reserves.

11. (1.) All or any of the men belonging to the army reserve may be called out for annual training at such time or times, and at such place or places within the United Kingdom, and for such period or periods, as may be prescribed, not exceeding in any one year twelve days or twenty drills.

Annual training of reserve forces.

(2.) Every man so called out may, during his annual training, be attached to and trained with a body of the regular or auxiliary forces.

(3.)

12. (1.) In case of imminent national danger or of great emergency it shall be lawful for Her Majesty in Council by proclamation, the occasion being first communicated to Parliament, if Parliament be then sitting, or declared in Council and notified by the proclamation, if Parliament be not then sitting, to order that the army reserve shall be called out on permanent service.

Calling out reserve forces on permanent service.

(a) The provisions of this Act relating to the Militia reserve are omitted as obsolete.

(2.) It shall be lawful for Her Majesty by any such proclamation to order a Secretary of State from time to time to give, and when given to revoke or vary, such directions as may seem necessary or proper for calling out the . . . force mentioned in the proclamation, or all or any of the men belonging thereto.

(3.) Every such proclamation and the directions given in pursuance thereof shall be obeyed as if enacted in this Act, and every man for the time being called out by such directions shall attend at the place and time fixed by those directions, and at and after that time shall be deemed to be called out on permanent service.

(4.) A proclamation under this section shall for the purposes of the Army Act, 1881, be deemed to be a proclamation requiring soldiers in the reserve to re-enter upon army service.

Assembly of
Parliament
when
reserve
forces
ordered to
be called
out on
permanent
service.

Service of
reserve men
called out.

13. Whenever Her Majesty orders the army reserve to be called out on permanent service, if Parliament be then separated by such adjournment or prorogation as will not expire within ten days, a proclamation shall be issued for the meeting of Parliament within ten days, and Parliament shall accordingly meet and sit upon the day appointed by such proclamation, and shall continue to sit and act in like manner as if it had stood adjourned or prorogued to the same day.

14. (1.) A man belonging to the reserve forces when called out on permanent service shall be liable to serve until Her Majesty no longer requires his services, so, however, that he shall not be required to serve for a period exceeding in the whole the remainder unexpired of his term of service in the reserve force to which he belongs, and any further period not exceeding twelve months during which as a soldier of the regular forces he can, under section eighty-seven of the Army Act, 1881, be detained in service after the time at which he would otherwise be entitled to be discharged.

(2.) A man called out on permanent service shall during his service form part of the regular forces, and be subject to the Army Act, 1881, accordingly, and the competent military authority within the meaning of Part Two of that Act may, if it seems proper, appoint him to any corps as a soldier of the regular forces, and the competent military authority within the meaning of the said Part Two may within three months after such appointment transfer him to any other corps of the regular forces, [so, however, that he shall not without his consent be appointed or transferred to a corps which is not in the arm or branch in which he previously served (a)].

(3.) Nothing in this section shall render a man in the second class of the army reserve liable to serve out of the United Kingdom,

(a) The words in brackets were repealed by s. 2 of the Reserve Forces Act, 1906 (6 Edw. 7, c. 11), but the repeal does not affect any man enlisted before the passing of the Act (viz., 20 July, 1906), except with his consent.

It was ruled that a soldier enlisted before the notice paper was amended to show his liability to be appointed to any corps on mobilization, could not be posted to a corps other than that for which he enlisted, without his consent.

The amendment to the notice paper was made on 7th July, 1908.

It has since been ruled as regards the Artillery, that a man enlisted before the 1st June, 1899, was liable to be posted to either the R.H.A., R.F.A. or R.G.A., on mobilization.

Those who enlisted after 1st June, 1899, and before the 7th July, 1908, could only be posted on mobilization to the R.H.A. or R.F.A., if enlisted for that corps, or to the R.G.A., if enlisted for R.G.A.

Those who enlisted after the 7th July, 1908, may be appointed to any corps when called out on permanent service.

When it is necessary to form special corps of Reservists in the colonies, such corps must be composed substantially of reservists, but this would not exclude the enrolment of other soldiers in the same corps, provided the above qualifications are substantially complied with.

and such man may from time to time be transferred from one corps to another for the purpose of securing his non-liability to service out of the United Kingdom.

15. (1.) When a man belonging to the army . . . reserve is called out for annual training or on permanent service, or when a man belonging to the army reserve is called out in aid of the civil power, and such man, without leave lawfully granted or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at any time and place at which he is required upon such calling out to attend, he shall—

Punishment for non-attendance for annual training or permanent service, &c.

(a) If called out on permanent service, or in aid of the civil power, be guilty, according to the circumstances, of deserting within the meaning of section twelve, or of absenting himself without leave within the meaning of section fifteen of the Army Act, 1881; and

(b) If called out for annual training, be guilty of absenting himself without leave within the meaning of section fifteen of the Army Act, 1881.

(2.) A man belonging to the army . . . reserve who commits an offence under this section, or under section twelve or section fifteen of the Army Act, 1881, whether otherwise subject to military law or not, shall be liable as follows; that is to say:—

(a) Be liable to be tried by court-martial, and convicted and punished accordingly; or

(b) Be liable to be convicted by a court of summary jurisdiction, and to be sentenced to a fine of not less than forty shillings and not more than twenty-five pounds, and in default of payment to imprisonment, with or without hard labour, for any term not less than seven days and not more than the maximum term allowed by law for non-payment of the fine;

and may in any case be taken into military custody.

16. (1.) Section one hundred and fifty-four of the Army Act, 1881, shall apply to a man who is a deserter or absentee without leave from the army . . . reserve within the meaning of this Act in like manner as it applies to a deserter in that section mentioned, and a man who under that section is delivered into military custody or committed for the purpose of being so delivered may be tried as provided by this Act.

Supplemental provisions as to deserters and absentees.

(2.) Any person who falsely represents himself to be a deserter or absentee without leave from the army . . . reserve shall be liable, on conviction by a court of summary jurisdiction, to imprisonment, with or without hard labour, for a term not exceeding three months.

17. (1.) Any person who by any means whatever—

(a) Procures or persuades any man belonging to the army . . . reserve to commit an offence of absence without leave within the meaning of this Act, or attempts to procure or persuade any man belonging to the army . . . reserve to commit such offence; or

Punishment for inducing reserve man to desert or absent himself.

(b) Knowing that a man belonging to the army . . . reserve is about to commit an offence of absence without leave within the meaning of this Act, aids or assists him in so doing; or

(c) Knowing any man belonging to the army . . . reserve to be an absentee without leave within the meaning of this Act, conceals such man, or aids or assists him in

concealing himself, or employs or continues to employ him, or aids or assists in his rescue ;

shall be liable, on conviction by a court of summary jurisdiction, to a fine not exceeding twenty pounds.

(2.) Section one hundred and fifty-three of the Army Act, 1881, shall apply as if a man belonging to the army . . . reserve were a soldier, and as if the word "desert" and other words referring to desertion included desertion within the meaning of this Act as well as desertion within the meaning of the Army Act, 1881 ; and any person who, knowing any man belonging to the army . . . reserve to be a deserter within the meaning of this Act or of the Army Act, 1881, employs or continues to employ such man, shall be deemed to aid him in concealing himself within the meaning of the said section.

Supplemental.

Attestation
of men
enlisting
in reserve
forces

18. (1.) Subject to the provisions of this Act, and save as is otherwise prescribed, a man enlisting in the army . . . reserve shall be attested in the same manner as a recruit in the regular forces, and the following sections of the Army Act, 1881 (that is to say) :—

Section eighty (relating to the mode of enlistment and attestation) ;

Section ninety-eight (imposing a fine for unlawful recruiting) ;

Section ninety-nine (making recruits punishable for false answers) ;

Section one hundred (relating to the validity of attestation and enlistment, or re-engagement) ;

Section one hundred and one (relating to the competent military authority) ; and

So much of section one hundred and sixty-three as relates to an attestation paper, or a copy thereof, or a declaration, being evidence ;

shall apply in like manner as if they were herein re-enacted, with the substitution—

(a) Of "man," or, if the context so requires, "reserve man," for "soldier," and of "army reserve . . . for "regular forces ;" and

(b)

(2.) A man so enlisting may be attested by a regular officer, and the sections of the Army Act, 1881, in this section mentioned, and also section thirty-three of the same Act, shall, as applied to the army . . . reserve, be construed as if a justice of the peace in those sections included such an officer.

Record of
illegal
absence of
reserve
man.

19. (1.) Where a man belonging to the army reserve . . . is subject to military law, and is illegally absent from his duty, a court of inquiry under section seventy-two of the Army Act, 1881, may be assembled after the expiration of twenty-one days from the date of such absence, notwithstanding that the period during which such man was subject to military law is less than twenty-one days, or has expired before the expiration of twenty-one days ; and the record mentioned in that section may be entered in manner thereby provided, or in such regimental books and by such officer as may be prescribed.

(2.) Where a man belonging to the army reserve . . . fails to appear at the time and place at which he is re-

quired upon being called out for annual training or on permanent service to attend, and his absence continues for not less than fourteen days, an entry of such absence shall be made by the prescribed officer in the prescribed manner and in the prescribed regimental books, and such entry shall be conclusive evidence of the fact of such absence.

20. (1.) Subject to the provisions of this Act, it shall be lawful for Her Majesty, by order signified under the hand of a Secretary of State, from time to time to make, and when made revoke and vary, orders with respect to the government, discipline, and pay of the army reserve . . . and with respect to other matters and things relating to the army reserve . . . including any matter by this Act authorized to be prescribed, or expressed to be subject to orders or regulations.

Orders and regulations as to reserve forces.

(2.) Subject to the provisions of any such order, a Secretary of State may from time to time make, and when made revoke and vary, general or special regulations with respect to any matter with respect to which Her Majesty may make orders under this section.

(3.) Where a man entered the army . . . reserve before the date of any order or regulation made under this Act, nothing in such order or regulation shall render such man liable, without his consent, to be appointed, transferred, or attached to any military body to which he could not, without his consent, have been appointed, transferred, or attached if the said order or regulation had not been made.

(4.) All orders and general regulations made under this Act shall be laid before both Houses of Parliament as soon as practicable after they are made, if Parliament be then sitting, or if Parliament be not sitting, then as soon as practicable after the beginning of the then next session of Parliament.

21. (1.) Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office may in relation to the reserve forces be exercised by or done by, to, or before any other person for the time being authorized in that behalf according to the custom of the service.

Exercise of powers vested in holder of military office.

(2.) Where by this Act, or by any order or regulation in force under this Act, any order is authorized to be made by any military authority, such order may be signified by an order, instruction, or letter under the hand of any officer authorized to issue orders on behalf of such military authority, and an order, instruction, or letter purporting to be signed by any officer appearing therein to be so authorized shall be evidence of his being so authorized.

22. Where, either before or after the passing of this Act, a man in the army reserve has been called out on permanent service, and at the termination of such service has been returned to the army reserve, and has become entitled to pension under any order or regulation in force under this Act (whether made before or after such calling out or return), the Commissioners of Chelsea Hospital shall have the same power to award and pay the said pension, and otherwise in relation to the said pension, as they would have if such man had been discharged from the army on reduction.

Pensions of army reserve men.

23. (1.) For the purpose of section one hundred and forty-three of the Army Act, 1881, and of all other enactments relating to such duties, tolls, and ferries as are in that section mentioned, officers and men belonging to the army . . . reserve, when going to or returning from any place at which they are required to attend, and for non-attendance at which they are liable to be punished, shall be deemed to be officers and soldiers of Her Majesty's regular forces on duty.

Application to reserve forces of enactments respecting exemptions from tolls and conveyance of regular forces

(2.) All enactments for the time being in force concerning the conveyance by railway or otherwise of any part of the regular forces, and their baggage, stores, arms, ammunition, and other necessaries and things, shall apply as if the army . . . reserve were such part of the regular forces.

Notices.

24. With respect to notices required in pursuance of the orders or regulations in force under this Act to be given to men belonging to the army . . . reserve, the following provisions shall have effect :—

- (1) A notice may be served on any such man either by being sent by post to his last registered place of abode, or by being served in the prescribed manner ;
- (2) Evidence of the delivery at the last registered place of abode of a man belonging to the army . . . reserve of a notice, or of a letter addressed to such man and containing a notice, shall be evidence that such notice was brought to the knowledge of such man ;
- (3) The publication of a notice in the prescribed manner in the parish in which the last registered place of abode of a man belonging to the army . . . reserve is situate shall be sufficient notice to such man, notwithstanding that a copy of such notice is not served on him ;
- (4) Every constable, overseer of the poor, and inspector of the poor shall, when so required by or on behalf of a Secretary of State, conform with the orders and regulations for the time being in force under this Act with respect to the publication and service of notices, and in default shall be liable, on conviction by a court of summary jurisdiction, to a fine not exceeding twenty pounds.

Trial of offences.

25. (1.) Any offence which under this Act is punishable on conviction by court-martial, shall for all purposes of and incidental to the arrest, trial, and punishment of the offender, including the summary dealing with the case by his commanding officer, be deemed to be an offence under the Army Act, 1881, with this modification, that any reference in that Act to forfeitures and stoppages shall be construed to refer to such forfeitures and stoppages as may be prescribed.

(2.) Any offence which under this Act is punishable on conviction by a court of summary jurisdiction may be prosecuted, and any fine recoverable on such conviction may be recovered in manner provided by sections one hundred and sixty-six, one hundred and sixty-seven, and one hundred and sixty-eight of the Army Act, 1881, in like manner as if those sections were herein re-enacted and in terms made applicable to this Act.

(3.) Save as provided by the said section one hundred and sixty-six, the minimum fixed by this Act for the amount of any fine or for the term of any imprisonment shall be duly observed by courts of summary jurisdiction, and shall, notwithstanding anything contained in any other Act, not be reduced by way of mitigation or otherwise.

(4.) For all purposes in relation to the arrest, trial, and punishment of a person for any offence punishable under this Act, including the summary dealing with the case by the commanding officer, this Act shall apply to the Channel Islands and the Isle of Man.

Provisions as to offences

26. With respect to the trial and punishment of men charged with offences which in pursuance of this Act are cognisable both

by a court-martial and by a court of summary jurisdiction, the following provisions shall have effect :—

triable both
by court-
martial and
by court of
summary
jurisdiction.

- (1) An alleged offender shall not be liable to be tried both by court-martial and by a court of summary jurisdiction, but may be tried by either of such courts, according as may be prescribed by orders or regulations under this Act. (a)
- (2) Proceedings against an alleged offender, before either a court-martial or his commanding officer or a court of summary jurisdiction, may be instituted whether the term of his reserve service has or has not expired, and may, notwithstanding anything in any other Act, be instituted at any time within two months after the time at which the offence becomes known to an officer who under the powers or regulations in force under this Act has power to direct the offender to be tried by a court-martial or by a court of summary jurisdiction, if the offender is apprehended at that time, or if he is not apprehended at that time, then within two months after the time at which he is apprehended, whether such apprehension is by a civil or military authority, and any limitation contained in any other Act with respect to the time for hearing and determining an offence shall not apply in the case of any proceeding so instituted.
- (4) For the purposes of this section the expression "tried by court-martial" shall include "dealt with summarily by his commanding officer."

27. (1.) Section one hundred and sixty-four of the Army Act, 1881 (which relates to evidence of the civil conviction or acquittal of a person subject to military law), shall apply to a man belonging to the army . . . reserve who is tried by a civil court, whether he is or is not at the time of such trial subject to military law. Evidence.

(2.) Section one hundred and sixty-three of the Army Act, 1881 (relating to evidence), shall apply to all proceedings under this Act.

28. In this Act, unless the context otherwise requires—

Definitions.

The expression "man" includes a warrant officer not holding an honorary commission, and a non-commissioned officer.

The expression "out-pensioners of Chelsea Hospital" includes all persons whose claims for prospective or deferred pension have been registered in virtue of any warrant of Her Majesty.

The expression "prescribed" means prescribed by orders or regulations in force under this Act.

Other expressions have the same meaning as they have in the Army Act, 1881.

In the Army Act, 1881, the expression "army reserve force" shall mean the army reserve under this Act.

29.

(2.) All orders, warrants, regulations, and directions in relation to the army reserve force which exist at the commencement of this Act shall, so far as consistent with the tenor thereof, be of the same effect as if they were orders or regulations under this Act, and may be revoked or altered accordingly. Repeal of Acts.

(3.) [spent].

(4.) [spent].

(a) He is not to be tried by a court of summary jurisdiction without the written sanction of an officer who has power to direct his trial by court-martial, or some authority superior to that officer; Army Reserve Regulations, para. 86.

Reserve Forces Act, 1890.

[53 & 54 VICT. c. 42.]

EXTRACT FROM.

An Act to remove certain doubts which have arisen under the Reserve Forces Act, 1882, and for other purposes connected therewith.

[14th August, 1890.]

Whereas certain men engaged in railway, post office, or telegraph service, and being volunteers, have been enlisted in Her Majesty's regular forces, and immediately upon such enlistment been transferred, under the Army Act, 1881, to the reserve, and have been attached as supernumeraries to a volunteer corps, and doubts have arisen as to whether such enlistment, transfer, and attachment are authorised by law, and it is expedient to remove such doubts:

Be it enacted as follows:—

Authority
to transfer
men to
reserve
immedi-
ately on
enlistment.

1. It is hereby declared that regulations of a Secretary of State under the Army Act can authorise any man having the special qualifications prescribed by those regulations to be enlisted in any of Her Majesty's regular forces, and immediately upon such enlistment to enter the reserve.

[ss. 2 and 3 are omitted as obsolete.]

Reserve Forces and Militia Act, 1898.

[61 & 62 VICT. c. 9.]

An Act to amend the Law relating to the Reserve Forces and Militia.

[1st July, 1898.]

Liability of
members of
the Army
Reserve to
be called
out on
permanent
service.
45 & 46
Vict. c. 48.

1. Any man belonging to the first class of the Army Reserve, whose character on transfer to the Army Reserve is good, shall, if he so agrees in writing, be liable during the first twelve months (a) of his service in that reserve to be called out on permanent service without such proclamation or communication to Parliament as is mentioned in Section twelve of the Reserve Forces Act, 1882, and the calling out of men under this Act shall not involve the meeting of Parliament as required by Section thirteen of that Act.

(a) See s. 32 (2) T.M.F. Act, 1907, which extends this period to the first two years service in the first-class of the Army Reserve.

Provided as follows :—

- (a.) The number of the men so liable shall not at any one time exceed six thousand ; (a)
- (b.) The power of calling out men under this section shall not be exercised except when they are required for service outside the United Kingdom when warlike operations are in preparation or in progress ;
- (c.) A man called out under this section shall not be liable to serve for more than twelve months ;
- (d.) Any agreement under this section may be revoked by three months' notice in writing ; and
- (e.) Any exercise of the power of calling out men under this section shall be reported to Parliament as soon as may be.

3. The number of men for the time being employed under this Act shall not be reckoned in the number of the forces authorised by the Army Act for the time being in force.

Provision as to numbers authorised by Army Act.

Reserve Forces Act, 1899.

[62 & 63 Vict. c. 40.]

An Act to amend the Law relating to the Reserve Forces.

[9th August, 1899.]

1. Where a soldier of the regular forces, when entitled to be transferred to the reserve, is serving out of the United Kingdom, he may, at his own request, be transferred to the reserve without being required to return to the United Kingdom, but subject to such conditions as to residence, as to liability to be called out for annual training or on permanent service or in aid of the civil power, or as to any other matters, as may be prescribed by regulations under Section twenty of the Reserve Forces Act, 1882, and thereupon the provisions of that Act, and of the Acts amending that Act, shall apply in the case of the soldiers so transferred with such adaptations as may be made by those regulations.

Permission to Army Reserve men to reside out of United Kingdom.

45 & 46 Vict. c. 48.

Reserve Forces Act, 1900.

[63 & 64 Vict. c. 42.]

An Act to amend the Reserve Forces Act, 1882.

[6th August, 1900.]

1. Men in the second division of the first class of the Army Reserve shall be liable to be called out on permanent service, notwithstanding that directions have not been given for calling out the whole of the first division on such service.

Amendment of 45 & 46 Vict. c. 48, s. 3, as to calling out on permanent service.

[For the effect of the rest of this section, see p.]

2. [The effect of this section is shown on p. 741.]

(a) See s. 32 (2) of the T. R. F. Act, 1907.

Reserve Forces Act, 1906.

[6 EDW. 7, c. 11.]

An Act to amend the Law relating to the Reserve Forces.

[20th July, 1906.]

Extension of
Reserve
Forces Act
to men when
outside the
United
Kingdom.

1. (1) Notwithstanding anything in the Reserve Forces Act, a man belonging to the Army Reserve may, if so authorized by or under the directions of the Secretary of State (a), reside in any British protectorate or in any part of His Majesty's dominions outside the United Kingdom, and men may be enlisted into the Army Reserve in any British protectorate or in any part of His Majesty's dominions outside the United Kingdom except in a colony possessing responsible government, and those Acts shall, subject to such adaptations as may be made under this section, apply to such men whilst so residing and to such enlistment.

45 & 46 Vict.
c. 48.

(2) Regulations made under section twenty of the Reserve Forces Act, 1882, may prescribe the conditions under which men belonging to the Army Reserve may, if so authorized, reside outside the United Kingdom, and the conditions under which men may be enlisted into the Army Reserve outside the United Kingdom, and may make such adaptations in the Reserve Forces Acts as may be necessary for the purpose of adapting those Acts to the circumstances of the several parts of His Majesty's dominions outside the United Kingdom or of British protectorates.

(3) In this section the expression "Reserve Forces Acts" means the Reserve Forces Act, 1882, as amended by any subsequent enactment, and includes any enactment applied by that Act as so amended; and the expression "colony possessing responsible government" means any colony which is specified in the Schedule to this Act, or which may hereafter on the grant to the colony of responsible government be added to that Schedule by Order in Council.

2. [The effect of this section is shown on p. 744, note (a), above.]

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SCHEDULE.

LIST OF COLONIES.

The Dominion of Canada.
The Commonwealth of Australia.
New Zealand.
Cape Colony. (b)
Natal. (b)
Newfoundland.

(a) See paras. 75, etc., Army Reserve Regulations.
(b) Now included in the Union of South Africa.

Territorial and Reserve Forces Act, 1907.

ARRANGEMENT OF SECTIONS.

PART I.—COUNTY ASSOCIATIONS.

Section.

1. Establishment of associations.
2. Powers and duties of associations.
3. Expenses of association.
4. Regulations.
5. Joint committees of associations.

PART II.—TERRITORIAL FORCE.

Raising and Maintenance of Force.

6. Raising and number of Territorial Force.

Government, Discipline, and Pay.

7. Government, discipline, and pay of Territorial Force.
8. First appointments to lowest rank of officers of the Territorial Force.

Enlistment, Service, Discharge.

9. Enlistment, term of service, and discharge.
10. Application of certain sections of the Army Act.
11. Enlistment of men discharged with disgrace from Army or Navy, or contrary to rules.
12. Enlistment into army reserve.
13. Area of service of Territorial Force.

Training.

14. Preliminary training of recruits of Territorial Force.
15. Annual training.
16. Laying of draft Orders in Council relating to training before Parliament.

Embodiment.

Section.

- 17. Embodiment of Territorial Force.
- 18. Disembodying of Territorial Force.

Notices.

- 19. Service and publication of notices.

Offences.

- 20. Punishment for failure to attend on embodiment.
- 21. Punishment for failure to fulfil training conditions.
- 22. Wrongful sale, &c., of public property.

Civil Rights and Exemptions.

- 23. Civil rights and exemptions.

Legal Proceedings.

- 24. Trial of offences and application of penalties.
- 25. Supplemental provisions as to trial of offences.
- 26. Evidence.

Miscellaneous.

- 27. Exercise of powers vested in holder of military office.
- 28. Application of enactments.

Transitory.

- 29. Transitory provisions.

PART III.—RESERVE FORCES.

- 30. Enlistment and terms of service of special reservists.
- 31. Agreements as to extension of service.
- 32. Liability of reservists to be called out.
- 33. Power to form battalions, &c., of reservists.
- 34. Transfer of Militia battalions to reserve.
- 35. Amendment of 45 & 46 Vict., c. 48, s. 6 (4).
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PART IV.—SUPPLEMENTAL.

- 37. Provisions as to orders, schemes, and regulations.
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- SCHEDULES.**

Territorial and Reserve Forces Act, 1907.

[7 EDW. 7, c. 9.]

An Act to provide for the reorganisation of His Majesty's Military Forces and for that purpose to authorise the establishment of County Associations, and the raising and maintenance of a Territorial Force, and for amending the Acts relating to the Reserve Forces. A.D. 1907.
[2nd August, 1907.]

PART I.

COUNTY ASSOCIATIONS.

Part I.

1.—(1) For the purposes of the reorganisation under this Act of His Majesty's military forces other than the regulars and their reserves, and of the administration of those forces when so reorganised, and for such other purposes as are mentioned in this Act, an association may be established for any county in the United Kingdom, with such powers and duties in connection with the purposes aforesaid as may be conferred on it by or under this Act.

s. 1.
Establishment of associations.

(2) Associations shall be constituted, and the members thereof shall be appointed and hold office in accordance with schemes to be made by the Army Council.

(3) Every such scheme shall provide—

- (a) For the date of the establishment of the association :
- (b) For the incorporation of the association by an appropriate name, with power to hold land for the purposes of this Act without licence in mortmain :
- (c) For constituting the lieutenant of the county, or failing him such other person as the Army Council may think fit, president of the association :
- (d) For the appointment of such number of officers representative of all arms and branches of the Territorial Force raised under this Act within the county (not being less than one-half of the whole number of the association) as may be specified in the scheme :
- (e) For the appointment by the Army Council, where it appears desirable, and after consultation with, and on the recommendation of, the authorities to be represented, of representatives of county and county borough councils and universities wholly or partly within the county :
- (f) For the appointment of such number of co-opted members as the scheme may prescribe, including, if thought desirable, representatives of the interests of employers and workmen :

(M.L.)

3 B 2

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Part I.

ss. 1-2.

- (g) For the appointment by the Army Council during the first three years after the passing of this Act, and subsequently for the election of a chairman and vice-chairman by the association, and for defining their powers and duties :
- (h) For the mode of appointment, term of office, and rotation of members of the association, and the filling of casual vacancies :
- (i) For the appointment by the association, subject to the approval of the Army Council, of a secretary and other officers of the association, and the accountability of such officers, and for the provision of offices :
- (j) For the procedure to be adopted including the appointment of committees and the delegation to committees of any of the powers or duties of the association :
- (k) For enabling such general officers of any part of His Majesty's forces, and not being members of the association, as may be specified in the scheme, or officers deputed by them, to attend the meetings of the association and to speak, but not to vote :
- (l) For dividing the county, where on account of its size or population it seems desirable to do so, into two or more parts, and for constituting sub-associations for the several parts, and for apportioning amongst the several sub-associations all or any of the powers and duties of the association, and regulating the relations of sub-associations to the association and to one another.

(4) A scheme may contain any consequential, supplemental, or transitory provisions which may appear to be necessary or proper for the purposes of the scheme, and also as respects any matter for which provision may be made by regulations under this Act and for which it appears desirable to make special provision affecting the association established by the scheme.

(5) All schemes made in pursuance of this Part of this Act shall be laid before both Houses of Parliament.

(6) Until an Order in Council has been made under this Act for transferring to the Territorial Force the units of the Yeomanry and Volunteers of any county (a) references in this section to the Territorial Force shall as respects that county be construed as including references to the Yeomanry and Volunteers.

Powers and
duties of
association.

2.—(1) It shall be the duty of an association when constituted to make itself acquainted with and conform to the plan of the Army Council for the organisation of the Territorial Force within the county and to ascertain the military resources and capabilities of the county, and to render advice and assistance to the Army Council and to such officers as the Army Council may direct, and an association shall have, exercise, and discharge such powers and duties connected with the organisation and administration of His Majesty's military forces as may for the time being be transferred or assigned to it by order of His Majesty signified under the hand of a Secretary of State or, subject thereto, by regulations under this Act, but an association shall not have any powers of command or training over any part of His Majesty's military forces.

(a) See Order in Council, dated March 19th, 1908, issued with Special Army Order of 20th March, 1908.

(2) The powers and duties so transferred or assigned may include any powers conferred on or vested in His Majesty, and any powers or duties conferred or imposed on the Army Council or a Secretary of State, by statute or otherwise, and in particular respecting the following matters:—

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Part I.
ss. 2-3.

- (a) The organisation of the units of the Territorial Force and their administration (including maintenance) at all times other than when they are called out for training or actual military service, or when embodied;
- (b) The recruiting for the Territorial Force both in peace and in war, and defining the limits of recruiting areas;
- (c) The provision and maintenance of rifle ranges, buildings, magazines, and sites of camps for the Territorial Force;
- (d) Facilitating the provision of areas to be used for manoeuvres;
- (e) Arranging with employers of labour as to holidays for training, and ascertaining the times of training best suited to the circumstances of civil life;
- (f) Establishing or assisting cadet battalions and corps and also rifle clubs, provided that no financial assistance out of money voted by Parliament shall be given by an association in respect of any person in a battalion or corps in a school in receipt of a parliamentary grant until such person has attained the age of sixteen;
- (g) The provision of horses for the peace requirements of the Territorial Force;
- (h) Providing accommodation for the safe custody of arms and equipment;
- (i) The supply of the requirements on mobilisation of the units of the Territorial Force within the county, in so far as those requirements are directed by the Army Council to be met locally, such requirements where practicable to be embodied in regulations which shall be issued to county associations from time to time, and on the first occasion not later than the first day of January one thousand nine hundred and nine;
- (j) The payment of separation and other allowances to the families of men of the Territorial Force when embodied or called out on actual military service;
- (k) The registration in conjunction with the military authorities of horses for any of His Majesty's forces;
- (l) The care of reservists and discharged soldiers.

3.—(1) The Army Council shall pay to an association, out of money voted by Parliament for army services, such sums as, in the opinion of the Army Council, are required to meet the necessary expenditure connected with the exercise and discharge by the association of its powers and duties. Expenses of association.

(2) An association shall submit to the Army Council annually, at the prescribed time, and may submit at any other time for any special purpose, in the prescribed form and manner, a statement of its necessary requirements, and all payments to an association by the Army Council shall be made upon the basis of such statements in so far as they are approved by the Army Council.

(3) Subject to regulations under this Act, all money so paid to an association shall be applicable to any of the purposes specified in the approved statements in accordance with which the money

A.D. 1907. has been granted, but not otherwise except with the written consent of the Army Council:

Part I.

ss. 3-4.

Provided that nothing in this section shall be construed as enabling the Army Council to give their consent to the application of money to any purpose to which, apart from this section, it could not lawfully be applied, or to give their consent, without the authority of the Treasury, in any case in which, apart from this section, the authority of the Treasury would be required.

(4) All other money received by an association (except such money, if any, as may be received by it for specified purposes) shall be available for the purposes of any of its powers and duties.

(5) An association shall cause its accounts to be made up annually and audited in such manner as may be prescribed, and shall send copies of its accounts as audited, together with any report of the auditors thereon, to the Army Council.

(6) Regulations made for the purposes of this section shall be subject to the consent of the Treasury.

(7) The members of an association shall not be under any pecuniary liability for any act done by them in their capacity as members of such association in carrying out the provisions of this Act.

Regulations.

4.—(1) Subject to the provisions of this Act, the Army Council may make regulations for carrying this Part of this Act into effect, and may by those regulations, amongst other things, provide for the following matters:—

- (a) For regulating the manner in which powers are to be exercised and duties performed by associations, and for specifying the services to which money paid by the Army Council is to be applicable;
- (b) For authorising and regulating the acquisition by or on behalf of an association of land for the purposes of this Act and the disposal of any land so acquired;
- (c) For authorising and regulating the borrowing of money by an association;
- (d) For authorising the acceptance of any money or other property, and the taking over of any liability, by an association, and for regulating the administration of any money or property so acquired and the discharge of any liability so taken over;
- (e) For facilitating the co-operation of an association with any other association, or with any local authority or other body, and for providing by the constitution of joint committees or otherwise for co-operative action in the organisation and administration of divisions, brigades, and other military bodies and for the provision of assistance by one association to another;
- (f) For affiliating cadet corps and battalions, rifle clubs, and other bodies to the Territorial Force or any part thereof;
- (g) For or in respect of anything by this Part of this Act directed or authorised to be done or provided by regulations or to be done in the prescribed manner;
- (h) For the application for the purposes of this Part of this Act, as respects any matters to be dealt with by regulations, of any provision in any Act of Parliament dealing with the

like matters, with the necessary modifications or adaptations, and in particular of any provisions as to the acquisition of land by or on behalf of volunteer corps.

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(2) All regulations made in pursuance of this Part of this Act shall be applicable to all associations, except in so far as may be otherwise provided by the regulations or by any scheme made under this Part of this Act.

ss. 4-7.

(3) All regulations made under this Part of this Act shall be laid before both Houses of Parliament as soon as may be after they are made.

5.—(1) Any county associations may from time to time join in appointing out of their respective bodies a joint committee for any purpose in respect of which they are jointly interested.

Joint committees of associations.

(2) Any association appointing a joint committee under this subsection may delegate to it any power which such association might exercise for the purpose for which the committee is appointed.

(3) Subject to the terms of delegation any such joint committee shall in respect of any matter delegated to it have the same power in all respects as the associations appointing it.

(4) The costs of a joint committee shall be defrayed by the associations by whom it has been appointed, in such proportion as may be agreed between them, and the accounts of such joint committees and their officers shall for the purposes of the provisions of this Act be deemed to be accounts of the associations appointing them and of their officers.

PART II.

TERRITORIAL FORCE.

Raising and Maintenance of Force.

Part II.

6. It shall be lawful for His Majesty to raise and maintain a force, to be called the "Territorial Force," consisting of such number of men as may from time to time be provided by Parliament.

Raising and number of Territorial Force.

Government, Discipline, and Pay.

7.—(1) Subject to the provisions of this Part of this Act, it shall be lawful for His Majesty, by order signified under the hand of a Secretary of State, to make orders with respect to the government, discipline, and pay and allowances of the Territorial Force, and with respect to all other matters and things relating to the Territorial Force, including any matter by this Part of this Act authorised to be prescribed or expressed to be subject to orders or regulations. (a)

Government, discipline, and pay of Territorial Force.

(2) The said orders may provide for the formation of men of the Territorial Force into regiments, battalions, or other military bodies, and for the formation of such regiments, battalions, or other military bodies into corps, either alone or jointly with any other part of His Majesty's forces, and for appointing, transferring, or attaching men of the Territorial Force to corps, and for posting, attaching, or otherwise dealing with such men within the corps;

(a) See Order by His Majesty on p. 11 of T.F. Regs.

A.D. 1907. and may provide for the constitution of a permanent staff, including
 Part II. adjutants and staff sergeants who shall, except in special circum-
 ss. 7-8. stances certified by the general officer commanding, be members
 of His Majesty's regular forces; and may regulate the appointment,
 rank, duties, and numbers of the officers and non-commissioned
 officers of the Territorial Force.

(3) Subject to the provisions of any such order, the Army Council may make general or special regulations with respect to any matter with respect to which His Majesty may make orders under this section.

(4) Provided that the said orders or regulations shall not—

- (a) affect or extend the term for which, or the area within which, a man of the Territorial Force is liable under this Part of this Act to serve; or
- (b) authorise a man of the Territorial Force when belonging to one corps to be transferred without his consent to another corps; or
- (c) when the corps of a man of the Territorial Force includes more than one unit, authorise him when not embodied to be posted, without his consent, to any unit other than that to which he was posted on enlistment; or
- (d) When the corps of a man of the Territorial Force includes any battalion or other body of the regular forces, authorise him to be posted without his consent to that battalion or body.

(5) Where a man of the Territorial Force was enlisted or re-engaged before the date of any order or regulation under this Part of this Act, nothing in such order or regulation shall render him liable without his consent to be appointed, transferred, or attached to any military body to which he could not without his consent have been appointed, transferred, or attached if the said order or regulation had not been made.

(6) Orders and regulations under this section may provide for the formation of a reserve division of the Territorial Force, and may relax or dispense with any of the provisions of this Act relating to the training of the men of the Territorial Force so far as regards their application to men in the reserve division, and may, notwithstanding anything in this section, authorise a man in the reserve division to be transferred from one corps to another, so, however, that a man in the reserve division shall not, without his consent, be transferred to a corps of another arm.

(7) All orders and general regulations made under this section shall be laid before both Houses of Parliament as soon as may be after they are made.

First ap-
pointments
to lowest
rank of
officers of
the Terri-
torial Force.

8. Subject to any directions which may be given by His Majesty, first appointments to the lowest rank of officer in any unit of the Territorial Force shall be given to persons recommended by the president of the association for the county, if a person approved by His Majesty is recommended by the president for any such appointment within thirty days after notice of a vacancy for the appointment has been given to the president in the prescribed manner, provided he fulfils all the prescribed conditions as to age, physical fitness, and educational qualifications; and, where a unit comprises

men of the Territorial Force of two or more counties, the recommendations for such appointments shall be made by the presidents of the associations for the respective counties in such rotation or otherwise as may be prescribed.

A. D. 1907.

Part II.

ss. 8-9.

Enlistment, Service, Discharge

9.—(1) Subject to the provisions of this Part of this Act, all men of the Territorial Force shall be enlisted by such persons and in such manner and subject to such regulations as may be prescribed :

Enlistment
term of service,
and discharge.

Provided that every man enlisted under this Part of this Act—

(a) Shall be enlisted for a county for which an association has been established under this Act and shall be appointed to serve in such corps for that county or for an area comprising the whole or part of that county as he may select, and, if that corps comprises more than one unit within the county, shall be posted to such one of those units as he may select :

(b) Shall be enlisted to serve for such a period as may be prescribed, not exceeding four years, reckoned from the date of his attestation :

(c) May be re-engaged within twelve months before the end of his current term of service for such a period as may be prescribed not exceeding four years from the end of that term, and on re-engagement shall make the prescribed declaration before a justice of the peace or an officer, and so from time to time.

(2) A man enlisted in the Territorial Force, until duly discharged in the prescribed manner, shall remain subject to this Part of this Act as a man of the Territorial Force.

(3) Any man of the Territorial Force shall, except when a proclamation ordering the Army Reserve to be called out on permanent service is in force, be entitled to be discharged before the end of his current term of service on complying with the following conditions :—

(i) Giving to his commanding officer three months' notice in writing, or such less notice as may be prescribed, of his desire to be discharged ; and

(ii) Paying for the use of the association for the county for which he was enlisted such sum as may be prescribed not exceeding five pounds ; and

(iii) Delivering up in good order, fair wear and tear only excepted, all arms, clothing, and appointments, being public property, issued to him, or, in cases where for any good and sufficient cause the delivery of the property aforesaid is impossible, on paying the value thereof :

Provided that it shall be lawful for the association for the county, or for any officer authorised by the association, in any case in which it appears that the reasons for which the discharge is claimed are of sufficient urgency or weight, to dispense either wholly or in part with all or any of the above conditions.

(4) A man of the Territorial Force may be discharged by his commanding officer for disobedience to orders by him while doing any military duty, or for neglect of duty, or for misconduct by him as a man of the Territorial Force, or for other sufficient cause, the

A.D. 1907. existence and sufficiency of such cause to be judged of by the commanding officer :

Part II.

ss. 9-11. : Provided that any man so discharged shall be entitled to appeal to the Army Council who may give such directions in any such case as they may think just and proper.

(5) Where the time at which a man of the Territorial Force would otherwise be entitled to be discharged occurs while a proclamation ordering the Army Reserve to be called out on permanent service is in force, he may be required to prolong his service for such further period, not exceeding twelve months, as the competent military authority may order.

Application of certain sections of the Army Act.

44 & 45 Vict. c. 58.

10.—(1) The following sections of the Army Act shall apply to the Territorial Force (that is to say):—

Section eighty (relating to the mode of enlistment and attestation);

Section ninety-six (relating to the claims of masters to apprentices);

Section ninety-eight (imposing a fine for unlawful recruiting);

Section ninety-nine (making recruits punishable for false answers);

So much of section one hundred as relates to the validity of attestation and enlistment or re-engagement;

Section one hundred and one (relating to the competent military authority); and

So much of section one hundred and sixty-three as relates to an attestation paper, or a copy thereof, or a declaration, being evidence.

And the said sections shall apply in like manner as if they were herein re-enacted, with the substitution—

(a) Of "Territorial Force" for "regular forces," and of "man of the Territorial Force" for "soldier"; and

(b) (In section one hundred) of "has not within three months claimed his discharge on any ground on which he is entitled under this subsection to do so" for "has received pay as a soldier of the regular forces during three months."

(2) A recruit may be attested by any lieutenant or deputy-lieutenant of any county in the United Kingdom, or by an officer of the regular or Territorial forces, and the sections of the Army Act in this section mentioned, and also section thirty-three of the same Act, shall as applied to the Territorial Force be construed as if a justice of the peace in those sections included such lieutenant, deputy lieutenant, or officer.

Enlistment of men discharged with disgrace from Army or Navy, or contrary to rules.

11.—(1) If a person—

(a) Having been discharged with disgrace from any part of His Majesty's forces, or having been dismissed with disgrace from the Navy, has afterwards enlisted in the Territorial Force without declaring the circumstances of his discharge or dismissal; or

(b) Is concerned when subject to military law in the enlistment for service in the Territorial Force of any man, whom he knows or has reasonable cause to believe such man to be so circumstanced that by enlisting he commits an offence against the Army Act or this Act; or

(e) Wilfully contravenes when subject to military law any enactments, orders, or regulations which relate to the enlistment or attestation of men in the Territorial Force, he shall be guilty of an offence, and shall, whether otherwise subject to military law or not, be liable to be tried by court martial, and on conviction to suffer such punishment as is imposed for the like offence by section thirty-two or thirty-four of the Army Act, as the case may be, and may be taken into military custody.

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Part II.
ss. 11-14.

(2) For the purpose of this section the expression "discharged with disgrace" means discharged with ignominy, discharged as incorrigible and worthless, or discharged for misconduct, or discharged on account of a conviction for felony or a sentence of penal servitude.

12. If a man of the Territorial Force enlists into the army reserve without being discharged from the Territorial Force, the terms and conditions of his service whilst he remains in the army reserve shall be those applicable to him as a man belonging to the army reserve, and not those applicable to him as a man of the Territorial Force.

Enlistment
into army
reserve.

13.—(1) Any part of the Territorial Force shall be liable to serve in any part of the United Kingdom, but no part of the Territorial Force shall be carried or ordered to go out of the United Kingdom.

Area of
service of
Territorial
Force.

(2) Provided that it shall be lawful for His Majesty, if he thinks fit, to accept the offer of any part or men of the Territorial Force, signified through their commanding officer, to subject themselves to the liability—

(a) To serve in any place outside the United Kingdom ; or

(b) To be called out for actual military service for purposes of defence at such places in the United Kingdom as may be specified in their agreement, whether the Territorial Force is embodied or not ;

and, upon any such offer being accepted, they shall be liable, whenever required during the period to which the offer extends, to serve or be called out accordingly.

(3) A person shall not be compelled to make such an offer, or be subjected to such liability as aforesaid, except by his own consent, and a commanding officer shall not certify any voluntary offer previously to his having explained to every person making the offer that the offer is to be purely voluntary on his part.

Training.

14.—(1) Every man of the Territorial Force shall, by way of preliminary training, during the first year of his original enlistment—

Preliminary
training of
recruits of
Territorial
Force.

(a) If so provided by Order in Council (a), be trained at such places within the United Kingdom, at such times, and for such periods, not exceeding in the whole the number of days specified by the Order in Council, as may be prescribed, and may for that purpose be called out once or oftener ; and

(a) No Order in Council has up to the present been issued under this section.

A.D. 1907.
Part II.
ss. 14-17.

(b) Whether such an Order in Council has been made or not, attend the number of drills and fulfil the other conditions prescribed for a recruit of his arm or branch of the service.

(2) The requirement to attend training and drills, and to fulfil conditions under this section, shall be in addition to the requirement to attend training and drills and to fulfil conditions for the purpose of annual training.

Annual training.

15.—(1) Subject to the provisions of this section, every man of the Territorial Force shall, by way of annual training—

(a) Be trained for not less than eight nor more than fifteen, or in the case of the mounted branch eighteen, days in every year at such times and at such places in any part of the United Kingdom as may be prescribed, and may for that purpose be called out once or oftener in every year :

(b) Attend the number of drills and fulfil the other conditions relating to training prescribed for his arm or branch of the service :

Provided that the requirements of this section may be dispensed with in whole or in part—

(i) As respects any unit, by the prescribed general officer ; and

(ii) As respects an individual man, by his commanding officer subject to any general directions by the prescribed general officer.

(2) His Majesty in Council may—

(a) Order that the period of annual training in any year of all or any part of the Territorial Force be extended, but so that the whole period of annual training be not more than thirty days in any year ; or

(b) Order that the period of annual training in any year of all or any part of the Territorial Force be reduced to such time as to His Majesty may seem fit ; or

(c) Order that in any year the annual training of all or any part of the Territorial Force be dispensed with (a).

(3) Nothing in this section shall be construed as preventing a man, with his own consent, in addition to annual training, being called up for the purpose of duty or instruction in accordance with orders and regulations under this Part of this Act.

Laying of draft Orders in Council relating to training before Parliament.

16. Before any Order in Council is made under this Act providing for preliminary training or extending the period of annual training the draft thereof shall be laid before each House of Parliament for a period of not less than forty days during the Session of Parliament, and, if either of those Houses before the expiration of those forty days presents an address to His Majesty against the draft or any part thereof, no further proceedings shall be taken, without prejudice to the making of a new draft Order.

Embodiment.

Embodiment of Territorial Force.

17.—(1) Immediately upon and by virtue of the issue of a proclamation ordering the Army Reserve to be called out on permanent service, it shall be lawful for His Majesty to order the Army Council from time to time to give, and when given to revoke or vary, such directions as may seem necessary or proper for em-

(a) No Order in Council has up to the present been issued under this section.

bodying all or any part of the Territorial Force, and in particular to make such special arrangements as they think proper with regard to units or individuals whose services may be required in other than a military capacity :

A.D. 1907.
Part II.
ss. 17-19.

Provided that, where under any such proclamation directions have been issued for calling out all the men belonging to the first class of the Army Reserve, the Army Council shall, within one month after such directions have been issued, issue directions for embodying all the men belonging to the Territorial Force, unless an address has been presented to His Majesty by both Houses of Parliament praying that such directions as last aforesaid be not issued, and such directions shall not, unless the emergency so requires, be given until Parliament has had an opportunity of presenting such an address.

(2) Whenever, in consequence of the calling out of the whole of the first class of the Army Reserve, directions are required under this section to be given for embodying the Territorial Force, if Parliament be then separated by such adjournment or prorogation as will not expire within ten days, a proclamation shall be issued for the meeting of Parliament within ten days, and Parliament shall accordingly meet and sit upon the day appointed by such proclamation, and shall continue to sit and act in like manner as if it had stood adjourned or prorogued to the same day.

(3) Every order and all directions given under this section shall be obeyed as if enacted in this Act, and, where such directions for the time being direct the embodiment of any part of the Territorial Force, every officer and man belonging to that part shall attend at the place and time fixed by those directions, and after that time shall be deemed to be embodied, and such officers and men are in this Act referred to as embodied or as the embodied part or parts of the Territorial Force.

18.—(1) It shall be lawful for His Majesty by proclamation to order that the Territorial Force be disembodied, and thereupon the Army Council shall give such directions as may seem necessary or proper for carrying the said proclamation into effect.

Disembod-
ing of
Territorial
Force.

(2) Until any such proclamation of His Majesty has been issued the Army Council may from time to time, as they may think expedient for the public service, give such directions as may seem necessary or proper for disembodiment of any embodied part of the Territorial Force, and for embodying any part of the Territorial Force not embodied, whether previously disembodied or otherwise.

(3) After the date fixed by the directions for the disembodiment of any part of the Territorial Force, the officers and men belonging to that part shall be in the position of officers and men of the Territorial Force not embodied.

Notices.

19. Notices required in pursuance of this Part of this Act or of the orders and regulations in force thereunder to be given to men of the Territorial Force shall be served or published in such manner as may be prescribed, and, if so served or published, shall be deemed to be sufficient notice, and every constable and overseer

Service and
publication
of notices.

A.D. 1907. shall, when so required by or on behalf of the Army Council, conform with the orders and regulations for the time being in force under this Part of this Act with respect to the publication and service of notices, and in default shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding twenty pounds.

Part II.

ss. 19-22.

Offences.

Punishment for failure to attend on embodiment.

20.—(1) Any man of the Territorial Force who without leave lawfully granted, or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at the time and place appointed for assembling on embodiment, shall be guilty, according to the circumstances, of deserting within the meaning of section twelve, or of absenting himself without leave within the meaning of section fifteen, of the Army Act, and shall, whether otherwise subject to military law or not, be liable to be tried by court-martial, and convicted and punished accordingly, and may be taken into military custody.

(2) Sections one hundred and fifty-three and one hundred and fifty-four of the Army Act shall apply with respect to deserters and desertion within the meaning of this section in like manner as they apply with respect to deserters and desertion within the meaning of those sections, and any person who, knowing any man of the Territorial Force to be a deserter within the meaning of this section or of the Army Act, employs or continues to employ him, shall be deemed to aid him in concealing himself within the meaning of the first-mentioned section.

(3) Where a man of the Territorial Force commits the offence of desertion under this section the time which elapsed between the time of his committing the offence and the time of his apprehension or voluntary surrender shall not be taken into account in reckoning his service for the purpose of discharge.

Punishment for failure to fulfil training conditions.

21. Any man of the Territorial Force who without leave lawfully granted, or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at the time and place appointed for preliminary training, or for annual training, or fails to attend the number of drills and fulfil the other conditions relating to preliminary or annual training prescribed for his arm or branch of the service, shall be liable to forfeit to His Majesty a sum of money not exceeding five pounds recoverable on complaint to a court of summary jurisdiction by the prescribed officer, and any sums recovered by such officer shall be accounted for by him in the prescribed manner.

Wrongful sale, &c., of public property.

22. If any person designedly makes away with, sells, or pawns, or wrongfully destroys or damages, or negligently loses anything issued to him as an officer or man of the Territorial Force, or wrongfully refuses or neglects to deliver up on demand anything issued to him as an officer or man of the Territorial Force, the value thereof shall be recoverable from him on complaint to a court of summary jurisdiction by the county association; and he shall also, for any such offence of designedly making away with, selling or pawning, or wrongfully destroying as aforesaid, be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds.

Civil Rights and Exemptions.

A.D. 1907.

Part II.ss. 23-24.
Civil rights
and exemp-
tions.

23.—(1) The acceptance of a commission as an officer of the Territorial Force shall not vacate the seat of any member returned to serve in Parliament.

(2) An officer or man of the Territorial Force shall not be liable to any penalty or punishment for or on account of his absence during the time he is voting at any election of a member to serve in Parliament, or during the time he is going to or returning from such voting.

(3) If a sheriff is an officer of the Territorial Force, then during embodiment he shall be discharged from personally performing the office of sheriff, and the under sheriff shall be answerable for the execution of the said office in the name of the high sheriff; and the security given by the under sheriff and his pledges to the high sheriff shall stand as a security to the King and to all persons whomsoever for the due performance of the office of sheriff during such time.

(4) An officer or man of the Territorial Force shall not be compelled to serve as a peace officer or parish officer, and shall be exempt from serving on any jury, and a field officer of the Territorial Army shall not be required to serve in the office of high sheriff.

Legal Proceedings.

24.—(1) Any offence under this Part of this Act, and any offence under the Army Act if committed by a man of the Territorial Force when not embodied, which is cognizable by a court-martial shall also be cognizable by a court of summary jurisdiction, and on conviction by such a court shall be punishable with imprisonment for a term not exceeding three months or with a fine not exceeding twenty pounds, or with both such imprisonment and fine, but nothing in this provision shall affect the liability of a person charged with any such offence to be taken into military custody.

Trial of
offences and
application
of penalties.

(2) Any offence which under this Part of this Act is punishable on conviction by court-martial, shall for all purposes of and incidental to the arrest, trial, and punishment of the offender, including the summary dealing with the case by his commanding officer, be deemed to be an offence under the Army Act, with this modification, that any reference in that Act to forfeiture and stoppages shall be construed to refer to such forfeitures and stoppages as may be prescribed.

(3) Any offence which under this Part of this Act is punishable on conviction by a court of summary jurisdiction may be prosecuted, and any fine recoverable on such conviction may be recovered, in manner provided by sections one hundred and sixty-six, one hundred and sixty-seven, and one hundred and sixty-eight of the Army Act, in like manner as if those sections were herein re-enacted and in terms made applicable to this Part of this Act, subject to the following modification (namely) :—

Every fine imposed under this Part of this Act on a man of the Territorial Force, or recovered on a prosecution instituted under this Part of this Act, shall, notwithstanding anything

A.D. 1907. in any Act or charter or in the said section to the contrary,
 Part II. be paid to the association of the county for which the man was
 enlisted.

ss. 24-26.

(4) Where a man of the Territorial Force is subject to military law and is illegally absent from his duty, a court of inquiry under section seventy-two of the Army Act may be assembled after the expiration of twenty-one days from the date of such absence, notwithstanding that the period during which he was subject to military law is less than twenty-one days or has expired before the expiration of twenty-one days.

Supplemental provisions as to trial of offences.

25.—(1) A person charged with an offence which under this Part of this Act is cognizable both by a court-martial and by a court of summary jurisdiction shall not be liable to be tried both by a court-martial and by a court of summary jurisdiction, but may be tried by either of them, as may be prescribed :

Provided that a man who has been dealt with summarily by his commanding officer shall be deemed to have been tried by court-martial.

(2) Proceedings against an offender before either a court-martial or his commanding officer, or a court of summary jurisdiction, in respect of an offence punishable under this Part of this Act, and alleged to have been committed by him when a man of the Territorial Force, may be instituted whether the term of his service in the Territorial Force has or has not expired, and may, notwithstanding anything in any other Act, be instituted at any time within two months after the time at which the offence becomes known to his commanding officer if the alleged offender is then apprehended, or, if he is not then apprehended, then within two months after the time at which he is apprehended.

(3) Where an offender has on several occasions been guilty of desertion, fraudulent enlistment, or making a false answer, he may for the purposes of any proceedings against him be deemed to belong to any one or more of the corps to which he has been appointed or transferred as well as to the corps to which he properly belongs, and it shall be lawful to charge the offender with any number of the above-mentioned offences at the same time, whether they are offences within the meaning of the Army Act or offences within the meaning of this Part of this Act, and to give evidence of such offences against him, and, if he has been convicted of more than one offence, to punish him accordingly as if he had been previously convicted of any such offence.

Evidence.

26.—(1) Section one hundred and sixty-four of the Army Act (which relates to evidence of the civil conviction or acquittal of a person subject to military law) shall apply to a man of the Territorial Force who is tried by a civil court, whether he is or is not at the time of such trial subject to military law.

(2) Section one hundred and sixty-three of the Army Act (relating to evidence) shall apply to all proceedings under this Part of this Act.

Miscellaneous.

A.D. 1907.

Part II.

27.—(1) Any power or jurisdiction given to, and act or thing to be done by, to, or before any person holding any military office may, in relation to the Territorial Force, be exercised by or done by, to, or before any other person for the time being authorised in that behalf, according to the custom of the Service.

ss 27-29.
exercise of
powers
vested in
holder of
military
office.

(2) Where by this Part of this Act, or by any order or regulation in force under this Part of this Act, any order is authorised to be made by any military authority, such order may be signified by an order, instruction, or letter under the hand of any officer authorised to issue orders on behalf of such military authority, and an order, instruction, or letter purporting to be signed by any officer appearing therein to be so authorised shall be evidence of his being so authorised.

28.—(1) The Army Act shall apply to the Territorial Force and officers and men thereof in like manner as it applies to the Militia, and officers and men of the Militia, except that men of the Territorial Force shall, in addition, be subject to military law when called out on actual military service for purposes of defence, and shall be liable to dismissal as a punishment, and for that purpose the amendments contained in the First Schedule to this Act shall be made in the Army Act.

Application
of enact-
ments.

(2) For the purpose of section one hundred and forty-three of the Army Act and of all other enactments relating to such duties, tolls, and ferries as are in that section mentioned, officers and men belonging to the Territorial Force, when going to or returning from any place at which they are required to attend, and for non-attendance at which they are liable to be punished, shall be deemed to be officers and soldiers of the regular forces on duty.

(3) His Majesty may by Order in Council apply, with the necessary adaptations, to the Territorial Force or the officers or men belonging to that force any enactment relating to the Militia, Yeomanry, or Volunteers, or officers or men of the Militia, Yeomanry, or Volunteers, other than enactments with respect to the raising, service, pay, discipline, or government of the Militia, Yeomanry, or Volunteers, and every such Order in Council shall be laid before both Houses of Parliament (a).

Transitory.

29.—(1) Where an association has been established under this Act for any county His Majesty may by Order in Council transfer to the Territorial Force such units of the Yeomanry and Volunteers or part thereof raised in the county as may be specified in the Order, and every such unit or part thereof shall from the date mentioned in the Order be deemed to have been lawfully formed under this

Transitory
provision.

(a) The following enactments relating to the Militia and Volunteers were applied by an Order in Council dated the 19th March, 1908, to the Territorial Forces:—The Railway Act, 1842 (5 & 6 Vict. c. 55), s. 20; the Railway Act, 1844 (7 & 8 Vict. c. 85), s. 12; the National Defence Act, 1888 (51 & 52 Vict. c. 41), s. 52; the Friendly Societies Act, 1896, (59 & 60 Vict. c. 25), s. 43; the Officers' Commissions Act, 1882 (25 & 26 Vict. c. 2); the Regulation of Forces Act, 1871 (34 & 35 Vict. c. 86), part of s. 6.

A.D. 1907. Part of this Act as an unit of the Territorial Force as provided by
 Part II. the Order, and the provisions of this Part of this Act shall apply to
 it accordingly (a).

s. 29.

(2) Every officer and man of an unit or part thereof mentioned in any such Order shall, from the date mentioned in that Order, be deemed to be an officer or man of the Territorial Force. Provided that nothing in this section or in any Order made thereunder shall, without his consent, affect the conditions or area of service of any person commissioned, enlisted, or enrolled before the passing of this Act.

(3) An Order in Council under this section may provide—

(a) For the application to officers and men who become subject thereto of the provisions of this Act as to conditions and area of service, and for the continuance of the application to officers and men who remain subject thereto of the provisions as to conditions and area of service previously in force as respects those officers and men :

(b) For transferring to the association any property vested in a Secretary of State for the purposes of any unit to which the Order relates :

(c) For transferring to the association any property belonging to or held for the benefit of any such unit, so however that all property so transferred shall as from the date of the transfer be held by the association for the benefit in like manner of the corresponding unit of the Territorial Force or for such other purposes as the association, with the consent of such corresponding unit, to be ascertained in the prescribed manner, shall direct ; and any question which may arise as to whether any property is transferred to an association, or as to the trusts or purposes upon or for which it is or ought to be held, shall be referred for the decision of a Secretary of State whose decision shall be final. The corresponding unit of the Territorial Force shall, in the event of any such transfer, become entitled, notwithstanding the terms of any trust, limitation, or condition affecting the property so transferred, to the estate or interest in such property of the unit to the property of which the order relates ; but, subject to this provision, the interest of any beneficiary other than such unit shall not, without the consent of such beneficiary, be affected. The order may, if it be deemed proper, having regard to the special circumstances of any case, provide for the appointment of special trustees to act together with or to the exclusion of the association in regard to any such property and such special trustees may be the existing trustees of such property :

(d) For transferring to the association any liabilities of any such unit which the association is willing to assume, and providing for the discharge of any such liabilities which are not so transferred :

(a) By Order in Council dated 19th March, 1908, there were transferred to the Territorial Force all units of Yeomanry and Volunteers then existing, except the Irish Yeomanry, which became the Irish Horse, the Isle of Man Volunteers, certain Universities and corps schools, and certain units which were disbanded. Officers and men of the old units, with their consent, if eligible, became officers and men of the new units and subject to this Act.

- (c) For transferring to the association any land or interest in land acquired by the council of a county or borough on behalf of any volunteer corps to which the order relates, and any outstanding liabilities of the council incurred in respect thereof, if the council and the association consent:

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Part II.
ss. 29-31.

and may contain such supplemental, consequential, and incidental provisions as may appear necessary or proper for the purposes of the Order.

(4) Every Order in Council made under this section shall be laid before both Houses of Parliament.

PART III.—RESERVE FORCES.

Part III.

30.—(1) The power of enlisting men into the first class of the army reserve under the Reserve Forces Act, 1882, shall extend to the enlistment of men who have not served (a) in His Majesty's regular forces, and men so enlisted who have not served in the regular forces are in this Part of this Act referred to as special reservists, and a special reservist may be re-engaged, and when re-engaged shall continue subject to the terms of service applicable to special reservists.

Enlistment and terms of service of special reservists. 45 & 46 Vic. c. 48:

(2) A special reservist may in addition to being called out for annual training, be called out for a special course or special courses of training at such place or places within the United Kingdom at such time or times and for such period or periods, not exceeding in the whole six months, as may be prescribed, in like manner and subject to the like conditions as he may be called out for annual training, and may during any such course be attached to or trained with any body of His Majesty's forces.

(3) Notwithstanding the provisions of section eleven of the Reserve Forces Act, 1882, any special reservists may be called out for annual training for such period or periods as may be prescribed by any order or regulations under the Reserve Forces Act, 1882.

(4) Provided that where one of the conditions on which a man was enlisted or re-engaged is that he shall not be called out for training, whether special or annual, for a longer period than the period specified in his attestation paper, he shall not be liable under this section to be called out for any longer period.

(5) Where a proclamation ordering the army reserve to be called out on permanent service has been issued, it shall be lawful for His Majesty at any time thereafter by proclamation to order that all special reservists shall cease to be so called out, and thereupon a Secretary of State shall give such directions as may seem necessary or proper for carrying the said proclamation into effect.

(6) A special reservist who enlists into the regular forces shall upon such enlistment be deemed to be discharged from the army reserve.

31. A Secretary of State may, by regulations under the Reserve Forces Act, 1882, authorise any special reservist having the qualifications prescribed by those regulations to agree in writing that if the time when he would otherwise be entitled to be discharged occurs whilst he is called out on permanent service, he will continue

Agreements as to extension of service.

(3) See also A. A. 82 (3).

A.D. 1907.

Part III.

ss. 31-34.

to serve until the expiration of a period, whether definite or indefinite, specified in the agreement, and, if any man who enters into such an agreement is so called out, he shall be liable to be detained in service for the period specified in his agreement in the same manner in all respects as if his term of service were still unexpired.

Liability of
reservists to
be called
out.

32.—(1) A special reservist shall, if he so agrees in writing, be liable during the whole of his service in the army reserve, or during such part of that service as he so agrees, to be called out on permanent service without such proclamation or communication to Parliament as is mentioned in section twelve of the Reserve Forces Act, 1882, and the calling out of men under this section shall not involve the meeting of Parliament as required by section thirteen of that Act:

Provided that—

(a) The number of men so liable shall not at any one time exceed four thousand;

(b) The power of calling out of men under this section shall not be exercised except when they are required for service outside the United Kingdom when warlike operations are in preparation or in progress;

(c) Any agreement under this section may provide for the revocation thereof by such notice in writing as may be therein stated;

(d) Any exercise of the power of calling out men under this section shall be reported to Parliament as soon as may be:

(e) The number of men for the time being called out under this section shall not be reckoned in the number of the forces authorised by the Annual Army Act for the time being in force.

61 & 62 Vict.
c. 9.

(2) Six thousand shall be substituted for five thousand as the maximum number of men liable to be called out under section one of the Reserve Forces and Militia Act, 1898, and the liability to be called out under that section may, if so agreed, extend to the first two years of a man's service in the first class of the army reserve.

(3) In paragraph (5) of section one hundred and seventy-six of the Army Act the words "under His Majesty's proclamation" shall be repealed.

Power to
form bat-
tallions, &c.,
of reser-
vists.

33. Orders and regulations under the Reserve Forces Act, 1882, may provide for the formation of special reservists into regiments, battalions, or other military bodies, and for the formation of such regiments, battalions, or other military bodies into corps, either alone or jointly with any other part of His Majesty's forces, and for appointing, transferring, or attaching special reservists to such corps, and for posting, attaching, or otherwise dealing with special reservists within such corps.

Transfer of
Militia bat-
tallions to
Reserve.

34.—(1) His Majesty may by Order in Council transfer to the Army Reserve such battalions of the Militia as may be specified in the order, and every battalion so transferred shall from the date mentioned in the order be deemed to have been lawfully formed under this Part of this Act as a battalion of special reservists (a).

(a) By Order in Council dated April 9th, 1908, units of Militia, except such as were disbanded, were transferred to the Special Reserve, and became units of that force. The Irish Yeomanry were converted into units of the Special Reserve. The T.R.F. Act, 1907, did not provide for the transfer of Yeomanry units to the Special Reserve, and the Irish Yeomanry were accordingly disbanded and re-formed as Special Reserve units—The Irish Horse.

(2) As from the said date every officer of any battalion so transferred shall be deemed to be an officer in the reserve of officers, and every man in such battalion shall be deemed to be a special reservist, and the order may contain such provisions as may seem necessary for applying the provisions of the Reserve Forces Acts, 1882 to 1906, as amended by this Act, to those officers and men : A.D. 1907.
Part III.
ss. 34-38.

Provided that, unless any officer or man in any battalion so transferred indicates his assent to such transfer certified by his commanding officer, nothing in the order shall affect his existing conditions of service.

(3) All Orders in Council made under this section shall be laid before both Houses of Parliament.

35. Subsection (4) of section six of the Reserve Forces Act, 1882, which makes a certificate purporting to be signed by an officer appointed to pay men belonging to the army reserve evidence in certain cases, shall, where a person other than an officer is appointed to pay men belonging to the army reserve, apply to certificates purporting to be signed by such person. Amend-
men of 45
& 46 Vict.
c.48, s. 6 (4).

36. The acceptance of a commission as an officer in the reserve of officers shall not vacate the seat of any member returned to serve in Parliament. Commissions in
reserve of
officers not
to vacate
seat in
Parliament.

PART IV.—SUPPLEMENTAL.

Part IV.

37.—(1) Every Order in Council or scheme required by this Act to be laid before each House of Parliament shall be so laid within forty days next after it is made, if Parliament is then sitting, or, if not, within forty days after the commencement of the then next ensuing session ; and, if an address is presented to His Majesty by either House of Parliament within the next subsequent forty days, praying that any such order or scheme may be annulled, His Majesty may thereupon by Order in Council annul the same, and the order or scheme so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same. Provisions
as to order
schemes,
and regula-
tions.

(2) All Orders in Council, orders, schemes, and regulations made under this Act may be varied or revoked by subsequent Orders in Council, orders, schemes, and regulations made in the like manner and subject to the like conditions.

38. In this Act, unless the context otherwise requires— Definition.
The expression “ county ” means a county or riding of a county for which a lieutenant is appointed, and includes the City of London ; and each county of a city or county of a town mentioned in the first column of the Second Schedule to this Act shall be deemed to form part of the county set opposite thereto in the second column of that schedule ;

A.D. 1907.

Part IV.

ss. 38-40.

Special provisions as to special places.

The expression "man of the Territorial Force" includes a non-commissioned officer ;

The expression "prescribed" means prescribed by orders or regulations ;

Other expressions have the same meaning as in the Army Act.

39.—(1) The Lord Warden of the Cinque Ports may ex-officio be a member of the association of the county of Kent or of the county of Sussex, or of both, as may be provided by schemes under this Act.

(2) The Warden of the Stannaries may ex-officio be a member of the association of the county of Cornwall or of the county of Devon, or of both, as may be provided by schemes under this Act.

(3) The Lord Mayor of the City of London shall ex-officio be president of the association of the City of London.

(4) The Governor or Deputy Governor of the Isle of Wight shall ex-officio be a member of the association of the county of Southampton.

(5) Nothing in this Act shall affect the raising and levying of the Trophy Tax as heretofore in the City of London, but the proceeds of the Tax so levied may be applied by His Majesty's Commissioners of Lieutenancy for the City of London, if the Royal London Militia Battalion is re-constituted as a battalion of the Army Reserve, for any purposes connected with that battalion, and may also, if His Majesty's Commissioners of Lieutenancy for the City of London in their discretion see fit, be applied for the purposes of any of the powers and duties of the association of the City of London under this Act.

Application to Scotland and the Isle of Man.

40.—(1) In the application of this Act to Scotland the following modifications shall be made :—

(a) This Act shall apply to a county of a city in like manner as to any other county : Provided that on the representation or with the consent of the corporation of any county of a city it shall be lawful for His Majesty, by order signified under the hand of a Secretary of State, at any time after the passing of this Act, to declare that such county of a city shall for the purposes of this Act be deemed to form part of the county set opposite thereto in the second column of the Third Schedule to this Act, and to provide for all matters which may appear necessary or proper for giving full effect to the order ;

(b) The expression "county borough council" means the town council of a royal, parliamentary, or police burgh with a population of or exceeding twenty thousand according to the census for the time being last taken ;

(c) The expression "land" includes heritages ;

(d) The expression "overseer" means an inspector of poor.

(2) This Act shall apply to the Isle of Man as if it formed part of, and were included in the expression, the United Kingdom subject to the following modifications :—

(a) The Isle of Man shall be deemed to be a separate county ;

(b) References to the Governor of the Island shall be substituted for references to the lieutenant of a county ;

(c) References to a High Bailiff or two justices of the peace and to conviction by such a Bailiff or justices shall be sub-

stituted for references to a court of summary jurisdiction **A.D. 1907.**
 and to conviction under the Summary Jurisdiction Acts; **Part IV.**
 (d) References to the Tynwald Court shall be substituted for **s. 41.**
 references to Parliament in the section of this Act relating
 to civil rights and exemptions.

41. This Act may be cited as the Territorial and Reserve Forces **Short title.**
 Act, 1907, and so far as it relates to the reserve forces may be cited
 with the Reserve Forces Acts, 1882 to 1906, as the Reserve Forces
 Acts, 1882 to 1907.

SCHEDULES.

FIRST SCHEDULE.

Section 28.

Amendment of Army Act.

Section.	Amendment.
S. 13 (1) (a) and (b) ...	After the word "Militia" there shall be inserted the words "or Territorial Force."
S. 115 (7) ...	After the word "Whenever" there shall be inserted the words "a proclamation ordering the Army Reserve to be called out on permanent service or"
S. 115 (8) ...	After the words "then if" there shall be inserted the words "a proclamation ordering the Army Reserve to be called out on permanent service or"
S. 175 ...	After paragraph (3) there shall be inserted the following paragraph:— "(3A) Officers of the Territorial Force other than members of the permanent staff."
S. 176 ...	After paragraph (6) there shall be inserted the following paragraph:— "(6A) All non-commissioned officers and men belonging to the Territorial Force— "(a) When they are being trained or exercised, either alone or with any portion of the regular forces or otherwise; and "(b) When attached to or otherwise acting as part of or with any regular forces; and "(c) When embodied; and "(d) When called out for actual military service for purposes of defence in pursuance of any agreement."
S. 181 (4) ...	The words "the unit of the Territorial Force," shall be inserted after the words "officer commanding" where those words first occur, and the words "an unit of the Territorial Force," shall be inserted after those words where they secondly occur, and the words "Territorial Force," shall be inserted after the words "an officer, non-commissioned officer, or man of the".
S. 181 (4) (a) ...	After the word "any" there shall be inserted the words "man of the Territorial Force or"
S. 181 (4) (b) and (c) ...	The word "Militia" shall be repealed in both places where that word occurs, and the words "of the Territorial Force or Militia" shall be inserted after the word "man" in both places where that word occurs.
S. 181 (6) ...	After the word "Volunteers" there shall be inserted the words "or the Territorial Force."
S. 190 (12) ...	After the word "means" there shall be inserted the words "the Territorial Force."

A.D. 1907.

Section 38.

SECOND SCHEDULE.

Names of Cities and Towns.	County.
ENGLAND.	
County of the city of Chester	Chester.
County of the city of Exeter	Devon.
County of the town of Poole	Dorset.
County of the city of Gloucester	Gloucester.
County of the city of Bristol	Gloucester.
County of the city of Canterbury	Kent.
County of the city of Lincoln	Lincoln.
County of the city of Norwich	Norfolk.
County of the town of Newcastle-upon-Tyne	Northumberland.
Borough and town of Berwick-upon-Tweed	Northumberland.
County of the town of Nottingham	Nottingham.
County of the town of Southampton	Southampton.
County of the city of Lichfield	Stafford.
County of the city of Worcester	Worcester.
County of the city of York	West Riding of York.
County of the town of Kingston-upon-Hull	East Riding of York.
County of the town of Carmarthen	Carmarthen.
County of the town of Haverfordwest	Pembroke.
IRELAND.	
County of the city of Waterford	Waterford.
County of the town of Londonderry	Londonderry.

Section 40.

THIRD SCHEDULE.

SCOTLAND.

Name of County of City.	County.
County of the city of Edinburgh	Edinburgh.
County of the city of Glasgow	Lanark.
County of the city of Dundee	Forfar.
County of the city of Aberdeen	Aberdeen.

The Officers' Commissions Act, 1862.

[25 & 26 Vict. c. 4.]

- (1.) It shall be lawful for Her Majesty, by Order in Council, from time to time, as occasion may require, to direct that all or any commissions for officers prepared or to be prepared under the authority of Her Majesty's Royal Sign Manual, may be afterwards issued without Her Royal Sign Manual, but having thereon, in the case of Her Majesty's land forces, except as hereinafter mentioned, the signatures of the commander-in-chief or the general commanding-in-chief, and of one of Her Majesty's Principal Secretaries of State, and, in the case of the royal marines, of the Admiralty, and in the case of military chaplains, commissariat and store officers, and of adjutants and quartermasters in the militia and volunteer forces, of one of Her Majesty's said Principal Secretaries; and every such commission issued and signed in pursuance of such Order in Council shall be conclusive evidence that the officer named in any such commission has been appointed or promoted by Her Majesty to the rank or office named therein.
- (2.) Nothing herein contained shall be construed to prevent Her Majesty from signing any commission, or to prevent any commission so signed from having the same validity and effect as if this Act had not passed.
- Officers' commissions in the army, &c., may be issued without Her Majesty's royal sign manual being affixed thereto.
- Act not to affect Her Majesty's right to sign commission.

The Local Government Act, 1888.

[51 & 52 Vict. c. 41.]

- 59.—(1) A scheme or order under this Act may make such administrative and judicial arrangements incidental to or consequential on any alteration of boundaries, authorities, or other matters made by the scheme or order as may seem expedient.
- (2) A place which is part of an administrative county for the purposes of this Act shall, subject as in this Act mentioned, form part of that county for all purposes, whether sheriff, lieutenant, custos rotulorum, justices, militia, coroner, or other: Provided that—
- (a) Notwithstanding this enactment, each of the entire counties of York, Lincoln, Sussex, Suffolk, Northampton, and Cambridge shall continue to be one county for the said purposes so far as it is one county at the passing of this Act; and
- (b) This enactment shall not affect the existing powers or privileges of any city or borough as respects the sheriff, lieutenant, militia, justices, or coroner; but if any county borough is, at the passing of this Act, a part of any county for any of the above purposes, nothing in this Act shall prevent the same from continuing to be part of that county for that purpose; and
- (c) This enactment shall not affect parliamentary elections nor the right to vote at the election of a member to serve in Parliament, nor land tax, tithes, or tithe rent charge, nor
- Supplemental provision as to alteration of area.

the area within which any bishop, parson, or other ecclesiastical person has any cure of souls or jurisdiction.

(3) For the purposes of parliamentary elections, and of the registration of voters for such elections, the sheriff, clerk of the peace, and council of the county in which any place is comprised at the passing of this Act for the purpose of parliamentary elections shall, save as otherwise provided by the scheme or order, or by the County Electors Act, 1888, or this Act, continue to have the same powers, duties, and liabilities as they would have had if no alteration of boundary had taken place.

(4) Any scheme or order made in pursuance of this Act may, so far as may seem necessary or proper for the purposes of the scheme or order, provide for all or any of the following matters, that is to say—

- (a) May provide for the abolition, restriction, or establishment, or extension of the jurisdiction of any local authority in or over any part of the area affected by the scheme or order, and for the adjustment or alteration of the boundaries of such area, and for the constitution of the local authorities therein, and may deal with the powers and duties of any council, local authorities, quarter sessions, justices of the peace, coroners, sheriff, lieutenant, custos rotulorum, clerk of the peace, and other officer therein, and with the costs of any such authorities, sessions, persons, or officers as aforesaid, and may determine the status of any such area as a component part of any larger area, and provide for the election of representatives in such area, and may extend to any altered area the provisions of any local Act which were previously in force in a portion of the area; and
 - (b) May make temporary provision for meeting the debts and liabilities of the various authorities affected by the scheme or order, for the management of their property, and for regulating the duties, position, and remuneration of officers affected by the scheme or order, and applying to them the provisions of this Act as to existing officers; and
 - (c) May provide for the transfer of any writs, process, records, and documents relating to or to be executed in any part of the area affected by the scheme or order, and for determining questions arising from such transfer; and
 - (d) May provide for all matters which appear necessary or proper for bringing into operation and giving full effect to the scheme or order; and
 - (e) May adjust any property, debts, and liabilities affected by the scheme or order.
- (5) Where an alteration of boundaries of a county is made by this Act an order for any of the above-mentioned matters may, if it appears to the Local Government Board desirable, be made by that Board, but such order, if petitioned against by any council, sessions, or local authority affected thereby, within three months after notice of such order is given in accordance with this Act, should be provisional only, unless the petition is withdrawn or the order is confirmed by Parliament.
- (6) A scheme or order may be made for amending any scheme or order previously made in pursuance of this Act, and may be made by the same authority and after the same procedure as the

original scheme or order. Where a provision of this Act respecting a scheme or order requires the scheme or order to be laid before Parliament, or to be confirmed by Parliament, either in every case or if it is petitioned against, such scheme or order may amend any local and personal Act.

Regimental Debts Act, 1893.

[56 Vict. c. 5.]

An Act to consolidate and amend the Law relating to the Payment of Regimental Debts, and the Collection and Disposal of the Effects of Officers and Soldiers in case of Death, Desertion, Insanity, and other cases. [29th April, 1893.]

Collection of Effects and Payment of Preferential Charges.

1. On the death of a person while subject to military law the prescribed committee of adjustment shall, as soon as may be, in accordance with the prescribed regulations and subject to any exceptions made thereby,

On death of person subject to military law, committee of adjustment to secure effects and pay charges.

- (1.) Secure and make an inventory of all such of the effects of the deceased as are in camp or quarters, and, if the death occurs out of the United Kingdom, are within the prescribed area whether station, colony, or command, or other (which area is in this Act referred to as the regulation area); and
- (2.) Ascertain the amount and provide for the payment of the preferential charges on the property of the deceased.

2. The following shall be the preferential charges on the property of a person dying while subject to military law, and shall, except so far as other provision may be made for them or any of them, be payable in preference to all other debts and liabilities, and, as among themselves, in the following order:—

Preferential charges.

- (1.) Expenses of last illness and funeral;
- (2.) Military debts, namely, sums due in respect of, or of any advance in respect of—
 - (a) Quarters;
 - (b) Mess, band, and other regimental accounts;
 - (c) Military clothing, appointments, and equipments, not exceeding a sum equal to six months' pay of the deceased, and having become due within eighteen months before his death;

to which shall be added, where the death occurs out of the United Kingdom—

- (3.) Servants' wages, not exceeding two months' wages to each servant; and
- (4.) Household expenses incurred within a month before the death, or after the last issue of pay to the deceased, whichever is the shorter period.

3. So much only of the personal property of a person dying while subject to military law as remains after payment of the preferential charges, shall be considered personal estate of the deceased with reference to the calculation of probate duty, or of any other duty, tax, or percentage, or for any of the purposes of administration.

Surplus only of personal estate to be deemed personal estate.

4. If in any case a doubt or difference arises in relation to any preferential charge or the payment thereof, the decision of the Secretary of State, or of such officer or person as the Secretary

Decision of questions to preferential charges.

of State deputies by writing to act in this behalf, shall be final and shall be binding on all persons for all purposes.

Payment of preferential charges by representatives or other persons. Powers and duties of committee where preferential charges are not paid.

5. Subject to the prescribed regulations, if any person pays or secures the payment of the preferential charges in full, the committee of adjustment shall not further interfere in relation to the property, except so far as they may be requested so to do by or on behalf of that person.

6. (1.) If within one month after the death or such further time not exceeding the prescribed time as the committee of adjustment allow, the preferential charges are not paid or secured to their satisfaction, the committee shall proceed to pay those charges.

(2.) If the death occurs out of the United Kingdom, the committee of adjustment, save as may be prescribed, shall, if it appears to them necessary for the payment of the preferential charges, and in any case may, collect all the personal property of the deceased in the regulation area.

(3.) The committee, save as may be prescribed, shall, for the purpose of paying the preferential charges and their expenses, and in any case may, at such time as, subject to the prescribed regulations, they think expedient, sell and convert into money such of the personal property of the deceased as does not consist of money.

(4.) If the death occurs out of the United Kingdom they may also, save as otherwise prescribed, pay all debts, which appear to them to be legally payable, out of the personal estate of the deceased.

(5.) For the purpose of the exercise of their duties the committee shall, to the exclusion of all authorities and persons whomsoever, have the same rights and powers as if they had taken out representation to the deceased, and also if in a colony the powers which any official administrator has by the law of that colony; and any receipt given by the committee shall have the like effect as if it had been given by the legal personal representative of the deceased.

(6.) The committee of adjustment shall lodge the surplus remaining in their hands after payment of the said charges and expenses and debts with such person (in this Act referred to as the paymaster), at such times, in such manner, and together with such inventory, accounts, vouchers, and information as may be prescribed.

Disposal of Surplus and Residue.

Disposal of surplus by paymaster.

7. The paymaster shall pay the surplus in the prescribed manner, and subject to the prescribed provisions and exceptions, as follows:—

- (1.) If out of the United Kingdom he may pay thereout any expenses which under the prescribed regulations are chargeable against the surplus, and any debts which are legally payable out of the personal estate of the deceased;
- (2.) If he knows of a representative of the deceased in the same part of Her Majesty's dominions, he shall pay the surplus to that representative;
- (3.) If he does not know of such a representative as above mentioned, and the amount does not exceed one hundred pounds, he may pay or apply all or any part thereof to or for the benefit of such persons in the same part of Her Majesty's dominions as he knows of and appear to be beneficially entitled to the personal estate of the deceased, or to or for the benefit of any of such persons;
- (4.) He shall remit the surplus or so much thereof as is not paid or applied in pursuance of this section to the Secretary of State.

8. The Secretary of State, on being informed of the death of a person subject to military law, shall proceed with all reasonable speed as follows :—

Disposal
residue by
Secretary of
State.

- (1.) He shall cause to be ascertained the total amount to the credit of the deceased, including any surplus or part of a surplus remitted by a paymaster as mentioned in this Act, and all arrears of pay, batta grants, and other allowances in the nature thereof : which total amount so ascertained is in this Act referred to as the residue ;
- (2.) If he has notice of a representative of the deceased, he shall pay the residue to that representative ;
- (3.) He may, and if it is so prescribed shall, before such payment, publish the prescribed notice stating the amount of the residue and such other particulars respecting the deceased and his property as may seem fit, and also the mode in which any application respecting the residue is to be made to the Secretary of State. Provided that the Secretary of State may pay out of any money in his hands to the credit of the deceased any preferential charges appearing to him to have been left unpaid by the committee of adjustment.

9. Where the residue does not exceed one hundred pounds, the Secretary of State may, if he thinks fit, require representation to be taken out ; but if he does not, and has no notice of a representative of the deceased, then, after the expiration of the prescribed time and the publication of the prescribed notice (if any), the residue shall be disposed of as follows :—

Disposal by
Secretary of
State of
residue
where
residue does
not exceed
one
hundred
pounds, and
no represen-
tation.

- (1.) The Secretary of State may, if he thinks fit, pay or apply the residue or any part thereof, in accordance with the prescribed regulations to or for the benefit of any of the persons appearing to be beneficially entitled to the personal estate of the deceased, or any of them, and may for that purpose invest the same by deposit in a military or other savings bank, or otherwise, and, if necessary, in the name or names of a trustee or trustees for any such person.
- (2.) Any part thereof remaining in the hands of the Secretary of State, and not irrevocably appropriated, shall be applied in paying any debt of the deceased which—
 - (a) accrued within three years before the death ; and
 - (b) is claimed from the Secretary of State within two years after the death ; and
 - (c) is proved by the claimant to the satisfaction of the Secretary of State.
- (3.) Except as above in this section provided, a person shall not be entitled to obtain payment out of any residue in the hands of the Secretary of State of any sum due from the deceased.

10. (1.) Where any residue or any part thereof remains undisposed of and unappropriated, the prescribed notice thereof shall be published, and during six years next after the publication of that notice the like notice with any necessary modifications shall be annually published.

Application
of residue
undisposed
of.

(2.) So much of the residue as remains undisposed of and unappropriated for six months after the publication of the last of such notices shall, together with any income or accumulations of

income accrued therefrom, be applied in the prescribed manner in or towards the creation or maintenance of such compassionate or other fund for the benefit of widows and children, or other near relatives, of soldiers dying on service, or within six months after discharge, as may be prescribed.

(3.) Provided that the application under this section of any residue, or part of a residue, shall not bar any claim of any person to the same, or any part thereof.

Supplemental Provisions.

Disposal of medals and decorations.

11. Medals and decorations shall not be considered to be comprised in the personal estate of the deceased with reference to the claims of creditors or for any of the purposes of administration under this Act or otherwise; and, notwithstanding anything in this or any other Act, the same, when secured by the committee of adjustment, shall be held and disposed of according to regulations laid down by royal warrant.

Disposal of effects not money.

12. Where any part of the personal estate of the deceased consists of effects, securities, or other property not converted into money, the provisions of this Act with respect to paying or remitting the surplus shall, save as may be prescribed, extend to the delivery, transmission, or transfer of such effects, securities, or property, and the paymaster and Secretary of State shall respectively have the same power of converting the same into money as the representative of the deceased.

Regulations by royal warrant.

13. (1.) Her Majesty the Queen may, by warrant under the Royal Sign Manual, make regulations for all such things as are by this Act directed or authorised to be prescribed or made subject to regulations, and also such regulations as may seem fit for the better execution of this Act, or any part thereof; and may by such regulations make different provisions to meet different cases or different circumstances.

(2.) Every royal warrant made under this Act shall be printed by the Queen's printer, and published under the authority of Her Majesty's Stationery Office, and laid before both Houses of Parliament as soon as may be after the making thereof.

Restriction on interposition of official administrators.

14. (1.) An official administrator, notwithstanding any law regulating his office independently of this Act, shall not interpose in any manner in relation to any property of a person dying while subject to military law, except in the prescribed cases, or except when and so far as he is expressly required to do so by a committee of adjustment, or paymaster, or Secretary of State.

(2.) The committee of adjustment in such cases, under such circumstances, and at such times as may be prescribed, may request an official administrator to exercise his official powers either on behalf of the committee or otherwise, and the administrator shall comply with the request. The committee may also lodge any property secured or collected by them with any official administrator.

(3.) Where under this Act any property comes to the hands of any official administrator, he shall administer the same as regards preferential charges and otherwise in accordance with this Act, and subject thereto, according to the law regulating his office independently of this Act.

(4.) The official administrator shall remit any surplus remaining in his hands after discharge of all debts and his charges to the

Secretary of State at such time and in such manner as may be prescribed, to be disposed of according to the provisions of this Act as if remitted by a paymaster.

(5.) An official administrator shall not take a percentage on the property exceeding 3 per cent. on the gross amount coming to or remaining in his hands after payment of preferential charges.

15. Any property coming under this Act to the hands of any committee of adjustment or paymaster shall not, by reason of so coming, be deemed assets or effects at the place in which that committee or paymaster is stationed or resides, and it shall not be necessary by reason thereof that representation be taken out in respect of that property for that place.

Money remitted not to be assets in place where remitted to.

16. Where any surplus or residue, as the case may be, does not exceed one hundred pounds, no duty shall be payable in the United Kingdom or India in respect thereof, and it shall not be necessary that representation to any deceased person be taken out for the purpose of obtaining payment thereof or of any part thereof under this Act from a paymaster or a Secretary of State, except in any prescribed case, or in any case where the Secretary of State requires it.

Duty and representation where sums under one hundred pounds.

17. Compliance with the regulations under this Act with respect to the mode of payment of any surplus or residue or any part thereof to any person (whether by transmission or remission to another place or person or otherwise) shall discharge the Secretary of State or paymaster or other person complying with the regulations, and he shall not be liable by reason of the surplus or residue or part which may be in his hands having been paid, transmitted, remitted, or otherwise dealt with in accordance with the regulations.

Discharge of paymaster and Secretary of State.

18. Every payment, application, sale, or other disposition of property made by the Secretary of State, or by any committee of adjustment, or by any paymaster, when acting in execution or supposed execution of this Act, or of any royal warrant for carrying this Act into effect, shall be valid as against all persons whomsoever; and the Secretary of State, and every officer belonging to any such committee, and every such paymaster as aforesaid shall, by virtue of this Act, be absolutely discharged from all liability in respect of the property so paid, applied, sold, or disposed of.

Validity of payments, sales, &c., under this Act.

19. After the committee of adjustment have lodged with the paymaster the surplus of the property of any deceased person, any representative of that person and any official administrator shall, as regards any property of a deceased person not collected by the committee of adjustment and not forming part of the surplus or residue in this Act mentioned, have the same rights and duties as if this Act had not passed.

Saving for rights of representative.

20. A creditor, as such, shall not be deemed a person entitled to take out representation to the deceased within the meaning of this Act, or to pay or secure the preferential charges; nor shall a creditor taking out representation be entitled as representative of the deceased to claim from a paymaster or the Secretary of State any part of the property of the deceased.

Creditor administering not entitled to claim property.

21. (1.) Where any original will of a person dying while subject to military law, whether he died before or after the commencement of this Act, comes to the hands of a Secretary of State, and

Deposit in court of probate, &c., of

original
wills in
hands of
Secretary of
State, and
declaration
of intestacy.

representation under the same is not taken out, then the Secretary of State may cause the same to be deposited as follows :—

- (a) Where the domicile of the testator appears to the Secretary of State to have been in Scotland, then in the office of the commissary clerk of the commissary court of the county of Edinburgh :
- (b) Where the domicile of the testator appears to the Secretary of State to have been in Ireland, then in the place for the time being appointed in Dublin for the deposit of original wills brought into the High Court in Ireland :
- (c) In any other case, in the place for the time being appointed in London for the deposit of original wills brought into the High Court in England.

(2) Where a person dies while subject to military law intestate, and under this Act any residue of his property comes to the hands of the Secretary of State, and representation to the deceased is not taken out, then the Secretary of State may, if it seems fit, cause a declaration of his intestacy to be deposited in the place or office where his original will (if any) would be deposited as aforesaid.

(3) In every such case the Secretary of State may cause to be deposited, together with the original will or declaration of intestacy, an inventory showing the personal property of the deceased, and the application thereof, as far as the same is known.

(4) Every such original will, declaration of intestacy, and inventory shall be preserved and dealt with, and may be inspected, subject and according to the same rules or orders and on payment of the same fees as any other like documents deposited in that office or place, or subject and according to such other rules or orders and on payment of such other fees, as may be made or fixed in that behalf by the court, judge, or other authority empowered to make rules or orders in relation to other documents deposited in the same place or office.

Application of Act to special Cases.

Special provision as to an army paymaster.

22. In the application of this Act to an army paymaster the following modifications shall be made :—

- (1.) The powers and duties of the committee of adjustment shall arise immediately on his death, and shall continue notwithstanding that the professional charges are paid or secured :
- (2.) Money in the possession or under the control of an army paymaster at his death shall not be considered to be comprised in his effects for the purposes of this Act :
- (3.) The surplus in the hands of the committee of adjustment and the residue in the hands of a Secretary of State shall be dealt with and disposed of as may be prescribed and not according to the foregoing provisions of this Act.

Application of Act to deserters, felons, &c.

23. Where a person subject to military law deserts, or is absent without leave for twenty-one days, or is convicted by a civil court of any offence which by the law of England is felony, or is delivered up as an apprentice, whether in pursuance of an order of a court, or otherwise, the provisions of this Act shall apply as if the person were dead, subject to the following modifications :—

- (1.) The powers of the committee of adjustment shall arise and continue notwithstanding that the preferential charges are paid or secured :

- (2.) The committee of adjustment shall dispose of the surplus in the prescribed manner, and the same when so disposed of shall be free from all claim on the part of the said person or any one claiming through him.

24. Where a person subject to military law is ascertained in the prescribed manner to be insane, the provisions of this Act shall apply as if he had died at the time of his insanity being so ascertained, subject nevertheless to the prescribed exceptions, and to the following modifications :

Application of Act to case of insanity.

- (a) The preferential charges may be paid by the wife of the insane person, or by any person who, subject to the prescribed regulations, appears to be a relative of or person undertaking the care of the insane person or of his property ;
- (b) The committee of adjustment shall dispose of the surplus in the prescribed manner with a view to its being applied for the benefit of the insane person.

Application of Act to India.

25. This Act shall apply to India as if it were a colony, subject to the modifications in this Act mentioned, and to this exception, that it shall not, save so far as may be prescribed, apply to any native of India within the meaning of Indian military law.

General application of Act to India.

26. In the case of the death of a person who dies while in India or while on service with any force under the command of the commander-in-chief in India, or of any provincial commander-in-chief in India, and who is not a soldier of Her Majesty's regular forces, this Act shall apply with the following modifications :—

Provision where death occurs in India, the deceased not being a soldier.

- (1.) The paymaster shall after the prescribed notice pay all debts of which he has notice within the prescribed time, and which appear to him to be lawfully payable out of the estate of the deceased. Provided that if under the special circumstances of the case of the deceased it appears to the paymaster inexpedient or unjust to pay any claims out of the estate, or if the claims lodged exceed in the whole the prescribed amount, the paymaster shall, without discharging those claims, or any of them, transfer the surplus aforesaid to the official administrator :
- (2.) Where the paymaster does not so transfer the surplus, he shall dispose thereof, or of so much thereof as remains after the discharge of any claims, in manner directed by this Act :
- (3.) The foregoing provisions of this section shall not apply to an army paymaster :
- (4.) The secretary to the Government of India in the military department shall have the same power as the Secretary of State to decide any doubt or difference as to preferential charges, and his decision shall have the same effect as if it were given by the Secretary of State.

27. Nothing in this Act shall prevent the Secretary of State from deducting in the pay office from any arrears of pay due to the deceased the amount of any arrears of subscription due by the deceased to the Indian military and orphan funds, or either of them.

Deduction of arrears of subscription to military and orphan funds.

28. Anything authorized or required by this Act to be done by, to, or before a Secretary of State may, in the prescribed cases, be done by, to, or before the Secretary of State in Council of India.

Provision as to Secretary of State for India.

(M.L.)

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Definitions ; Extent ; Commencement ; Repeal ; Short Title.

Definitions. 29. In this Act, unless the context otherwise requires,—

The expression “officer” includes a warrant officer, although not holding an honorary commission :

The expression “representation” includes probate and letters of administration, with or without will annexed, and in Scotland confirmation, and in India or a colony the corresponding documents in use according to the law of India or the colony :

The expression “representative” means any person taking out representation, but does not include an official administrator :

The expression “official administrator” means in India the administrator-general of any presidency or province, and in a colony means any public officer who has by law any powers or duties in relation to the collection or distribution of the estate of any deceased person :

The expression “prescribed” means prescribed by Royal Warrant.

Save as aforesaid expressions in this Act have the same meaning as in the Army Act.

Extent of Act.

30. (1.) This Act shall apply to all persons subject to military law, whether within or without Her Majesty's dominions.

(2.) This Act shall be registered by the Royal Courts of the Channel Islands, and shall apply to those Islands and to the Isle of Man as if they were parts of the United Kingdom.

53 & 54 Vict.
c. 37.

(3.) This Act shall apply to a place in which Her Majesty exercises jurisdiction under the Foreign Jurisdiction Act, 1890, as if that place were a colony.

* * * * *

Royal Warrant—Regulations under the Regimental Debts Act, 1893.

VICTORIA R.I.

WHEREAS by Our Warrant of 22nd April, 1881, We were pleased to make the Regulations thereunto annexed, being regulations under the Regimental Debts Act, 1863 ; and Whereas by the Regimental Debts Act, 1893, which will come into operation on the 1st October, 1893, the Regimental Debts Act, 1863, is repealed ; and Whereas We deem it expedient to make Regulations under the Regimental Debts Act, 1893, to take effect as from the 1st October, 1893, in lieu of the Regulations annexed to Our said Warrant of the 22nd April, 1881 ;

OUR WILL AND PLEASURE is that our said Warrant of 22nd April, 1881, and the Regulations thereunto annexed, shall be and are hereby cancelled as from the 1st October, 1893, and this Our Warrant and Regulations which shall be administered, construed, and interpreted by Our Secretary of State for War, and Our Secretary of State in Council of India, as the case may require,

shall, on and after the 1st October, 1893, subject to and in conjunction with the Regimental Debts Act, 1893, be the sole outstanding authority on the matters therein treated of ;

PROVIDED ALWAYS that where and so far as the Regimental Debts Act, 1893, the Army Act, or this Our Warrant and the Regulations thereunto annexed do not particularly prescribe the manner in which any sum of money is to be disposed of or invested, then and in every such case, until by further Warrant under Our Royal Sign Manual we otherwise direct, the same shall be disposed of or invested as the same would have been disposed of or invested if the Acts above quoted had not been passed.

Given at Our Court at Balmoral, this 30th day of August, 1893, in the 57th year of Our Reign.

By Her Majesty's Command,

H. CAMPBELL-BANNERMAN.

REGULATIONS.

(Section 1 of the Act.)

1. The committee of adjustment will consist of three officers. When practicable, the president should not be below the rank of captain, or, if the deceased was an officer, below that of major.

2. The committee will be appointed by the following officers :—

If the deceased was serving with his unit, by the commanding officer.

If the death occurred at sea, by the officer commanding the troops on board ship.

In all other cases, except as provided in paragraph 5 (b) by the officer in immediate command.

3. If the death occurs at sea, and a committee cannot be assembled on board ship, it will be assembled as soon as possible after the ship reaches its destination. If the port of disembarkation is a military station, the committee will be assembled by the officer in immediate command ; if it is not a military station, by the general officer in whose command the port is situated.

4. If the officer authorized by paragraphs 2 or 3 to appoint a committee is, from any reason, unable to do so, he will apply to superior authority.

5. In cases where the deceased died while temporarily absent from the country in which he was stationed, then—

(a) If the death occurred out of the United Kingdom a local committee of adjustment may also be appointed by the officer in command of the unit or station from which the deceased was temporarily absent to deal with his affairs in that country ; and

(b) If the death occurred in the United Kingdom one committee only shall be assembled, which shall be appointed by the officer who would have appointed the committee had the deceased not been so temporarily absent.

5A. Where the deceased was an officer in receipt of regimental or other pay issued in advance, the committee of adjustment will ascertain from the agent or paymaster who issued the pay whether any sum is due to the public in respect of any issue beyond the date of the officer's death, and will, before paying any private bills or handing over any sum to the next of kin or legal representative, provide for the refund of any such over-issue of pay out of the assets in the hands of the committee.

6. The committee of adjustment will in all cases, except as provided in paragraph 8, as soon as practicable after the death, make an inventory of the property, and an account of the debts and credits of the deceased.

7. The inventory and account will be prepared in duplicate, on the forms supplied, and both the original and the duplicate will be certified by the committee of adjustment.

The original will be dealt with as hereafter directed in these regulations.

The duplicate will be disposed of as follows :—

(a) Where the deceased, not having been at the time of his death a member of the Indian Services, has died elsewhere than in India, it will be kept with the regimental or other proper records.

(b) Where the deceased was a member of the Indian Services at the time of his death or has died in India, it will, if he was an officer, be sent to the Secretary to the Government of India in the Military Department, and if he was a non-commissioned officer or man of His Majesty's British Forces, it will be kept with the regimental records, unless a surplus is transferred to the Administrator-General of the Presidency, or Province, under Section 26 (1) of the Act, in which case it will be sent to him. It will also accompany the remittance of a surplus under Section 26 (2) of the Act.

8. Where payment of the preferential charges is secured under Section 5 of the Act, the committee of adjustment may abstain from securing and making an inventory of the effects, if so requested by the person paying or securing payment of the preferential charges.

9. The effects secured will be kept in a place of security until duly sold or otherwise disposed of.

10. The expression "regulation area" means the station, colony, or command, or such other area as may, in case of doubt, be determined by the Secretary of State.

(Section 2 of the Act, § (1).)

11. The actual and necessary expenses of the funeral, in the United Kingdom or the colonies, of a warrant officer, non-commissioned officer, or man, will be borne by the public to such extent as may be provided for in the allowance regulations.

(Section 5 of the Act.)

12. The expression "any person" means the representative of the deceased, the widow (if any), or one of the next of kin.

13. Where the committee of adjustment withdraw from interference in relation to property of the deceased in consequence of the representative of the deceased, or his widow, or one of his next of kin, paying in full the preferential charges, the committee will forthwith forward, together with the inventory (if made) and account, a report of the facts and circumstances as follows :—

Where the deceased, not having been at the time of his death a non-commissioned officer or man of His Majesty's British Forces, has died in India or was a member of the Indian Services, to the Secretary to the Government of India in the military department.

In other cases to the Secretary of the War Office.

(Section 6 of the Act, § (1), (2), (3).)

14. A committee of adjustment assembled out of the United Kingdom may, if it thinks fit, postpone any sale of the effects until such time as the next of kin of the deceased have had an opportunity of notifying their wishes regarding the sale, or the withholding from sale of any portion of the effects.

15. The effects to be sold will be disposed of in the most advantageous manner either by private sale or by fair and open auction. Such auction will be held in the presence of a member of the committee of adjustment.

16. Such of the effects as the committee of adjustment do not sell by auction may be sent by them to the representative or next of kin of the deceased; but where it appears desirable to do so, the committee may annex any securities, share certificates, life assurance or other policies, bank deposit receipts or other documents of value to the original inventory and account for transmission to the War Office or India Office, as the case may be.

17. The practice of employing a non-commissioned officer in selling by auction such of the effects of a deceased officer or soldier as are not otherwise disposed of, will be adopted only in cases in which it appears to be most advantageous for the estate of the deceased. When much trouble and responsibility are thrown upon the non-commissioned officer by his being so employed, a commission, payable out of the effects, at a rate varying from two to five per cent. on the amount of the produce of the sale, according to the greater or less degree of trouble and responsibility thereby caused, may be paid to him, and charged in the statement of the accounts of the deceased, the man's receipt for the amount being annexed thereto, together with the certificate of the commanding officer that his employment as auctioneer was most advantageous for the estate, and that the duties performed by him justify the remuneration charged.

(Section 6 of the Act, § (4).)

18. The committee of adjustment will discharge all debts that have accrued in the same station, colony, or command which are proved to their satisfaction, except where the death occurs in India, and the deceased is not a soldier of His Majesty's British forces, in which case their discharge is provided for in Section 26 of the Act and paragraph 54 of these regulations.

(Section 6 of the Act, § (6).)

19. Where the deceased was an officer, not having been at the time of his death a member of the Indian services, and has died elsewhere than in India, the committee of adjustment assembled elsewhere than in India will lodge the surplus in the hands of the district paymaster for credit in his next account, taking a receipt for the amount. This receipt, together with the inventory and the account of debts and credits, will be transmitted by the committee to the Secretary of the War Office, through the officer commanding at the station. Any committee of adjustment assembled under paragraph 5 to deal with the affairs of the deceased, if any, in India, will lodge any surplus in the hands of the Controller of Military Accounts for remittance to the War Office, forwarding a report of the action taken and the inventory and account of debts and credits to the Secretary of the War Office as above.

20. Where the deceased was a non-commissioned officer or man serving in His Majesty's British forces, and was in the pay of the Indian Government, the committee of adjustment will lodge the surplus in the hands of the officer paying the corps, who will credit the amount in the next casualty return. Where the deceased was not in the pay of the Indian Government, the surplus will be credited in the pay list of the troop, squadron, battery, or company to which the deceased belonged.

21. In cases where the deceased not having been at the time of his death a non-commissioned officer or man of His Majesty's British forces has died in India, or was at the time of his death a member of the Indian Services, the committee of adjustment will remit the surplus to the secretary to the Government of India in the Military Department.

22. Whenever a committee of adjustment remit or lodge a surplus they will send or lodge therewith the original inventory and account, except as provided in paragraph 19.

23. In every case the officer present at the sale of effects will furnish a certified statement of the particulars thereof, which will be attached to the original inventory and account, and he will cause the amount produced by such sale to be carried to the credit of the account.

24. In cases in which paragraph 20 applies, the paymaster or other officer paying the corps will ascertain that all the articles reported in the inventory furnished to him as forthcoming are accounted for in the particulars of the sale, and will annex the inventory and account, and the particulars of the sale, to the current account or casualty return rendered by him, and will state therein the balance, debtor or creditor. In cases in which paragraph 21 applies, the military secretary will have the inventory and account, and the statement of the particulars of the sale, compared and examined.

25. Where a regiment of His Majesty's British forces is stationed in India, monthly casualty returns, made up according to the printed form, will be transmitted to the Secretary of State for War through the controller of military accounts in the Presidency, and sums therein mentioned will be stated in sterling money.

With respect to His Majesty's Indian forces, similar returns will be transmitted to the Secretary of State in Council of India.

26. Casualty returns from India will specify in each case whether the deceased was known to be possessed of property of any description whatever besides that stated in the casualty return, but not actually realised when the return is made. If any such other property is known, a statement of the particulars thereof, made out in duplicate, will be forwarded with the casualty return, and a memorandum will be annexed thereto of the steps that have been taken for recovering or realising the same under the Act. If no such other property is known, a memorandum to that effect will be made on the casualty return.

27. Where a deceased officer, warrant officer, non-commissioned officer, or man leaves a will, then, if representation is not taken out, the original will, and, if representation is taken out, a complete and authenticated copy of the will, will be sent, along with the inventory, account and other papers, by the committee of adjustment, and will be transmitted to the Secretary of State for War, or the Secretary of State in Council in India, as the case may require. Where the original will is sent, a complete and authenticated copy of it will be first made under the direction of the committee of adjustment, and will be kept with the regimental or other proper records.

(Section 7 of the Act.)

28. Payments to the next of kin, or legal representatives of deceased soldiers of His Majesty's British forces will be made in accordance with the directions on this point in the Financial Instructions. As regards deceased officers, where representation is not taken out, the surplus will be disposed of as directed in paragraph 19. If, however, the death occurs in India, or the deceased was at the time of his death a member of the Indian Services, the surplus will be remitted by the Secretary to the Government of India in the Military Department, as directed in paragraph 55.

(Section 9 of the Act.)

29. In cases in which representation is not taken out, payment will be made to or for the benefit of each person appearing to be beneficially interested in an estate; but in special cases, where it appears desirable, payment of the whole residue will be made to the person entitled to take out representation to the deceased.

(Section 10 of the Act.)

30. The notice under Section 10 of the Act will be published in the London Gazette as soon as may be convenient, and will, with such variations as circumstances require, specify the name, rank, and regiment of the deceased, and the amount of the residue.

(Section 11 of the Act.)

30A. The medals of an officer or soldier dying in the service will be disposed of as follows:—

- (1) When bequeathed by will.—The medals will be sent to the legatees.
- (2) When not bequeathed by will.—The medals will be sent to the next-of-kin, in the following order of relationship:

widow ; eldest surviving son ; eldest surviving daughter ; father ; mother ; eldest surviving brother ; eldest surviving sister ; eldest surviving half-brother ; eldest surviving half-sister.

Medals which cannot be disposed of as above may be sent to any relative or other interested party, who, in the opinion of the Army Council, will preserve them with due care as a memorial of the deceased.

Medals issued after the death of an officer or soldier will be similarly dealt with.

The same procedure will be followed in the case of decorations except where specific direction as to disposal is contained in statutes or rules of the various orders.

(Section 14 of the Act.)

31. The committee of adjustment (in India) will deliver over the effects secured by them to the Administrator-General only in case they apprehend that considerable difficulty or delay may arise in or about the collection or realisation of the effects and credits of the deceased, in consequence of the character of any investment, or in consequence of it being requisite to institute some action or suit in relation to the property of the deceased, or in case there is some other peculiar circumstance connected with the property making it, in the judgment of the committee, expedient to take that course.

32. Where the committee of adjustment deliver over effects to an Administrator-General, they will do so as soon as practicable after they have determined to take that course.

33. Where the committee of adjustment deliver over effects to an Administrator-General, they will forthwith forward, together with the inventory and account, a report of the facts and circumstances, as follows :—

Where the deceased was a non-commissioned officer or man of His Majesty's British forces, to the Secretary of the War Office ; in other cases, to the Secretary to the Government of India in the Military Department.

34. The Administrator-General will remit to the Secretary of State for India the balance of the estate as soon as possible after the discharge of all debts and liabilities, and after the payment to any persons resident in India of the share or shares to which they may be legally entitled. He will further submit to the Government of India, for transmission to the India Office, a half-yearly return of these estates and the manner in which they have been disposed of.

(Section 22 of the Act.)

35. In the case of an army paymaster, the committee of adjustment will, if possible, comprise a member of the Army Pay Department.

The committee of adjustment are to forthwith remit the surplus to the Secretary of State for War, through the district account or casualty return (see paragraphs 19 and 20), and the residue will then be applied in discharge of any preferential claims that may remain unsettled, or of any claims in respect of public accounts for

which the deceased was responsible. Any portion of the residue then remaining will be paid or applied in accordance with Section 9 of the Act.

(Section 23 of the Act.)

36. In all cases of desertion, absence without leave for 21 days, and of a soldier being delivered up as an apprentice, or being convicted of felony by the civil power, the committee of adjustment will be composed in like manner as in the respective cases of death, and the foregoing regulations relative to the respective cases of death will be applied as far as the difference of the circumstances will admit.

37. The kit of an apprentice will be disposed of as provided in the Clothing Regulations, and should he be in possession of any plain clothes when claimed by his master, such clothes will not be sold but returned to the man.

38. In the case of the desertion of a soldier the effects (other than the free kit of necessaries) will be sold as soon as may be convenient after he has been declared a deserter, or been absent without leave for 21 days (but within three months from the date of desertion). His necessaries will be retained in store for six months as laid down in the Clothing Regulations for re-issue to him in the event of his rejoining. After six months the articles will be available for issue to any rejoined deserter, the value of the necessaries so issued being credited to the non-effective account of the original owner. If, however, the deserter should rejoin while any articles of his necessaries remain unsold, and if he should require such articles for his military purposes, the articles will be returned to him, and he will not be subject to forfeiture in respect thereof.

39. The proceeds of the sale of the effects will be credited in a statement of the deserter's accounts (his "non-effective account"), exhibiting his assets and such of his liabilities as would, under the Act, be preferential charges against the estate. Any sum deposited by the soldier in the regimental savings bank will also be credited in the non-effective account.

40. The balance on the non-effective account shall be applied, so far as it will extend, for the purposes and in the order following, that is to say—

- (a) In payment of any debts due to the public on account of articles of public property made away with, or otherwise lost on desertion, and of any other debts that may be due to the public.
- (b) In payment or satisfaction of such other debts or liabilities of or claims against the soldier, as the Secretary of State for War or the Secretary of State in Council of India shall think fit to allow, including herein claims by reason of any criminal or wrongful act of the soldier.

41. Should any balance then remain the amount will be credited in the accounts of the Paymaster or other accountant in whose accounts the pay of the man to the date of desertion is charged.

42. If the soldier shall rejoin or be recovered to the service within three years from the date of desertion, or, in the event of his having fraudulently re-enlisted, if such fraudulent re-enlistment has been discovered within that period, any balance left after the settlement of the claims (if any) which may have been payable

under paragraph 40, may be applied in payment of any debts due on account of articles of necessities issued to the soldier on his rejoining, or of any debts due on account of his re-equipment.

43. If the soldier shall rejoin, or be recovered to the service within one year from the date of desertion, or in the event of his having fraudulently re-enlisted, if such fraudulent re-enlistment has been discovered within that period, any balance left after the settlement of the claims (if any) which may have been payable under paragraphs 40 and 42 may be repaid to the soldier himself.

44. Any balance remaining after the settlement of the claims (if any) which may have been payable under paragraphs 40 and 42, shall, at the expiration of three years from the date of desertion, be considered as forfeited, and will be disposed of as the Secretary of State for War or the Secretary of State in Council of India respectively may determine.

45. Any articles of private property which may be in the possession of the deserter on his apprehension, or on his rejoining from desertion, shall be sold, and the proceeds, together with any money of which he may be similarly in possession, shall be applied in payment of the debt (if any) on his non-effective account, and any surplus shall be disposed of as provided in paragraphs 40, 42, and 43. If, however, the deserter be not retained in the service, but discharged, any plain clothes of which he may be in possession shall not be sold, but be utilised in accordance with the provisions of the clothing regulations.

46. Should there be reason to believe that any property or money left behind by the soldier on his desertion, or subsequently found in his possession, has been obtained by theft or fraud, the Secretary of State shall be empowered, at his discretion, to restore such property, or to apply the amount realised by the sale thereof, or the amount of such money towards making good the loss caused by the theft or fraud.

47. In the case of a soldier being delivered up as an apprentice, or convicted of felony by the civil power, the surplus remaining in the hands of the committee of adjustment, together with any balance of pay that may be due, will be applied in all respects in the same manner as mentioned in paragraphs 40, 42, and 43, except that no payment of the residue, under paragraph 43, shall be made to any soldier convicted of felony until he shall have undergone such punishment as he may have been sentenced to for the same.

* * * * *

(Section 24 of the Act.)

48. The manner in which it shall be ascertained that a person subject to military law is insane shall be by the finding of a Board of Officers of the Army Medical Service, or Indian Medical Service, jointly or severally, or by the finding of the Director-General of the Army Medical Service or the Director of Medical Services, India.

49. In cases of insanity the committee of adjustment will be composed in like manner as in the respective cases of death.

50. The foregoing regulations relative to the respective cases of death will be applied in a case of insanity, as far as the difference of the circumstances will admit; except that whenever possible the sale of effects will be deferred until, in the case of an officer, he is removed from the active list, and in the case of a soldier until he is discharged; and further that the committee of adjustment will forthwith remit or lodge the money remaining in their hands to or in the hands of the army paymaster, military secretary, or other officer or person to whom or in whose hands they are to remit or lodge the surplus in the respective cases of death, and he will forthwith transmit the same to the Secretary of State for War, or the Secretary of State in Council of India, as the case may require.

51. The same will be then, with all convenient speed, applied for the benefit of the officer or soldier to whom it belongs, in such manner as the Secretary of State for War or the Secretary of State in Council of India (as the case may be) in his discretion thinks fit.

(Section 26 of the Act, § (1).)

52. As soon as possible after receiving the surplus from the committee of adjustment, the Secretary to the Government of India in the Military Department will cause the notice under Section 26 (1) of the Act to be published by advertisement in the Government Gazette of the Presidency in which the deceased was last quartered.

53. The notice will be in the following form, with such variations as circumstances require:—

The Regimental Debts Act, 1893, Section 26, § (1).

Notice is hereby given :

First. That information has been received by me of the deaths of the Officers, Warrant Officers, non-commissioned officers, and soldiers named and described in the subjoined table.

Secondly. That there have been received by me, as the surplus of their respective properties, the amount set opposite their respective names in the same table.

Thirdly. That all claims by creditors against the respective properties of the deceased are to be lodged with me within two calendar months from the date of this notice.

(Signed) A.B.

Military Secretary.

Calcutta

day of

The Table before referred to.

Number.	Christian name and surname in full of Officer, Warrant Officer, non-commissioned officer, or soldier deceased.	Branch of Service to which deceased belonged.	No. of regiment.	Rank of deceased.	Place of death.	Date of death.	Amount of surplus.	Whether deceased is known to have left a will or not.	Other particulars respecting deceased and his property and remarks.	Number.
1										1
2										2
3										3
4										4

54. At the expiration of two months from the date of the first publication of the notice, the military secretary will, in the following cases, proceed to discharge demands of such claimants as lodge claims with him :—

- (1.) If the surplus does not exceed 1,000 rupees, and the claims lodged do not exceed in the whole 10 per cent. on the amount of the surplus.
- (2.) If the surplus exceeds 1,000 rupees, and the claims lodged do not exceed in the whole the sum of 100 rupees.

(Section 26 of the Act, § (2).)

55. In those cases in which, after the discharge of claims under paragraph 54 of these regulations, the military secretary does not dispose of the surplus locally under Section 7 of the Act, he will, as soon as possible after two months, and within six months after the first publication of the notice, remit the surplus as follows :—

In the case of members of the Indian Services, to the Secretary of State in Council of India.

In other cases to the Secretary of State for War.

NOTE.—The term "Indian Services" in these regulations comprises officers of His Majesty's Indian Army and His Majesty's Indian Medical Service, and officers and warrant officers of departments under the Government of India and the Commander-in-Chief in India.

Royal Warrant—Soldiers' Effects Fund.

VICTORIA R. & I.

WHEREAS by our Warrants of the 12th June, 1884, and the 16th July, 1887, We are pleased to make regulations for carrying into effect the provisions of Section 18 of the Regimental Debts Act, 1863, respecting the undisposed of residues of the effects of persons dying on service while subject to military law ;

AND WHEREAS by the Regimental Debts Act, 1893, which comes into operation on the 1st October, 1893, the Regimental Debts Act, 1863, is repealed ;

AND WHEREAS We deem it expedient by this Our Warrant to make regulations for carrying into effect the provisions of Section 10, § (2), of the Regimental Debts Act, 1893 ;

NOW, THEREFORE, OUR WILL AND PLEASURE IS, and We do by this Our Warrant direct, as follows :—

1. Our Warrants of the 12th June, 1884, and the 16th July, 1887, shall be and the same are hereby cancelled as from the 1st October, 1893.

2. All such undisposed of and unappropriated residues, mentioned in Section 10, § (2), of the Regimental Debts Act, 1893, as are now in the hands of Our Secretary of State for War, and are applicable as mentioned in that sub-section, together with any income or accumulations of income accrued therefrom, shall forthwith, and all such undisposed of and unappropriated residues, as shall, from time to time, hereafter be in the hands of Our Secretary of State for War for the time being, together with any income and accumulations of income accrued therefrom, shall, from time to time, until We shall by Our Warrant direct to the contrary, be paid over and transferred unto the Official Trustees for the time being of the Patriotic Fund ; and We do hereby order and direct the payment over and transfer of the said residues and income and accumulations of income accordingly.

3. All residues and income and accumulations of income so to be paid over or transferred as aforesaid from time to time, shall form one fund to be called the "Soldiers' Effects Fund," to be under the management and control of the Executive Committee for the time being of Our Commissioners for the time being of the said Patriotic Fund, but subject to and under such orders and regulations as may from time to time be made by Our said Commissioners or any three or more of them ; and shall be applied in payment of such compassionate, annual, or other allowances, to the widows and children or other dependent relatives of soldiers dying on service, or within six months after discharge, and generally in such manner for the benefit of such widows and children or other dependent relatives of soldiers dying as aforesaid, as the said Executive Committee, or any two or more of them, shall, from time to time, think fit, preferential consideration being given to the widows and children of soldiers on the married establishment, who—

- (a) Were killed in action, or died of wounds received in action, or from illness which can be directly traced to fatigue, privation, or exposure incident to active operations in the field, within 12 months of sustaining such wound or contracting such illness ;

- (b) Died from an injury directly traceable to military duty within 12 months of sustaining such injury ;
- (c) Died from illness directly traceable to fatigue, privation, or exposure in the performance of military duty.

4. The widows and children of Mobilised Army Reserve men dying as aforesaid shall be considered as on the married establishment.

5. The said "Soldiers' Effects Fund" shall be held by the Official Trustees for the time being of the said Patriotic Fund, on behalf of Our said Commissioners for the time being as having the management thereof. Our said Commissioners shall be at liberty to invest the said "Soldiers' Effects Fund" upon such investments as they or any three or more of them shall from time to time think fit, and shall keep separate accounts of the said Fund.

6. This Warrant shall come into operation on the 1st October, 1893.

Given at Our Court at Osborne, this 22nd day of August, 1893, in the 57th Year of Our Reign.

By Her Majesty's Command,

H. CAMPBELL-BANNERMAN.

The Friendly Societies Act, 1896.

[59 & 60 VICT. c. 25.]

Militiamen
and
volunteers.

43.—(1) A person shall not, by reason of his enrolment or service in the militia, or as a naval coast volunteer, Royal Naval volunteer, naval artillery volunteer, or in any corps of yeomanry or volunteers whatsoever, lose or forfeit any interest in a friendly society or branch whether registered or unregistered which he possesses at the time of his being so enrolled or serving or be fined for absence from or non-attendance at any meeting of the society or branch, if his absence or non-attendance is occasioned by the discharge of his military or naval duty as certified by his commanding officer, any rules of the society or branch to the contrary notwithstanding.

(b) This is applied to the Territorial Force by the T. E. F. Act, and Order in Council, dated March 19th, 1908.

Official Secrets Act, 1911.

[1 & 2 GEO. 5 c. 28.]

An Act to re-enact the Official Secrets Act, 1889, with Amendments.
[22nd August, 1911.]

1.—(1.) If any person for any purpose prejudicial to the safety A.D. 1911.
or interests of the State—

- (a.) approaches or is in the neighbourhood of, or enters any Penalties for spying.
prohibited place within the meaning of this Act; or
- (b.) makes any sketch, plan, model, or note which is calculated
to be or might be or is intended to be directly or indirectly
useful to an enemy; or
- (c.) obtains or communicates to any other person any sketch,
plan, model, article, or note, or other document or
information which is calculated to be or might be or is
intended to be directly or indirectly useful to an enemy;
he shall be guilty of felony, and shall be liable to penal servitude
for any term not less than three years and not exceeding seven
years.

(2.) On a prosecution under this section, it shall not be necessary
to show that the accused person was guilty of any particular act
tending to show a purpose prejudicial to the safety or interests of
the State, and, notwithstanding that no such act is proved against
him, he may be convicted if, from the circumstances of the case, or
his conduct, or his known character as proved, it appears that his
purpose was a purpose prejudicial to the safety or interests of the
State; and if any sketch, plan, model, article, note, document, or
information relating to or used in any prohibited place within the
meaning of this Act, or anything in such a place, is made, obtained,
or communicated by any person other than a person acting under
lawful authority, it shall be deemed to have been made, obtained,
or communicated for a purpose prejudicial to the safety or interests
of the State unless the contrary is proved.

2.—(1.) If any person having in his possession or control any Wrongful communication, &c., of information.
sketch, plan, model, article, note, document, or information which
relates to or is used in a prohibited place or anything in such
a place, or which has been made or obtained in contravention of
this Act, or which has been entrusted in confidence to him by any
person holding office under His Majesty or which he has obtained
owing to his position as a person who holds or has held office under
His Majesty, or as a person who holds or has held a contract made
on behalf of His Majesty, or as a person who is or has been
employed under a person who holds or has held such an office or
contract,—

- (a.) communicates the sketch, plan, model, article, note,
document, or any information to any person, other than a
person to whom he is authorised to communicate it, or a
person to whom it is in the interest of the State his duty
to communicate it, or
- (b.) retains the sketch, plan, model, article, note, or document in
his possession or control when he has no right to retain it
or when it is contrary to his duty to retain it:

that person shall be guilty of misdemeanour.

(2) If any person receives any sketch, plan, model, article, note, document, or information, knowing, or having reasonable ground to believe, at the time when he receives it, that the sketch, plan, model, article, note, document, or information is communicated to him in contravention of this Act, he shall be guilty of a misdemeanour, unless he proves that the communication to him of the sketch, plan, model, article, note, document, or information was contrary to his desire.

Definition
of pro-
hibited
place.

(3.) A person guilty of a misdemeanour under this section shall be liable to imprisonment with or without hard labour for a term not exceeding two years, or to a fine, or to both imprisonment and a fine.

3. For the purposes of this Act, the expression "prohibited place" means—

- (a.) any work of defence, arsenal, factory, dockyard, camp, ship, telegraph or signal station, or office belonging to His Majesty, and any other place belonging to His Majesty used for the purpose of building, repairing, making, or storing any ship, arms, or other materials or instruments of use in time of war, or any plans or documents relating thereto; and
- (b.) any place not belonging to His Majesty where any ship, arms, or other materials or instruments of use in time of war, or any plans or documents relating thereto, are being made, repaired, or stored under contract with, or with any person on behalf of, His Majesty, or otherwise on behalf of His Majesty; and
- (c.) any place belonging to His Majesty which is for the time being declared by a Secretary of State to be a prohibited place for the purposes of this section on the ground that information with respect thereto, or damage thereto, would be useful to an enemy; and
- (d.) any railway, road, way, or channel, or other means of communication by land or water (including any works or structures being part thereof or connected therewith), or any place used for gas, water, or electricity works or other works for purposes of a public character, or any place where any ship, arms, or other materials or instruments of use in time of war, or any plans or documents relating thereto, are being made, repaired, or stored otherwise than on behalf of His Majesty, which is for the time being declared by a Secretary of State to be a prohibited place for the purposes of this section, on the ground that information with respect thereto, on the destruction or obstruction thereof, or interference therewith, would be useful to an enemy.

Attempts
to commit
offence, or
incitement
to commit
offence,
under Act.

4. Any person who attempts to commit any offence under this Act, or incites, or counsels, or attempts to procure another person to commit an offence under this Act, shall be guilty of felony or of a misdemeanour according as the offence in question is felony or misdemeanour, and on conviction shall be liable to the same punishment, and to be proceeded against in the same manner, as if he had committed the offence.

Person
charged
with felony
under Act,
may be con-
victed of

5. Any person charged with an offence which is a felony under this Act may, if the circumstances warrant such a finding, be found guilty of an offence which is a misdemeanour under this Act.

6. Any person who is found committing an offence under this Act, whether that offence is a felony or not, or who is reasonably

suspected of having committed, or having attempted to commit, or being about to commit, such an offence, may be apprehended and detained in the same manner as a person who is found committing a felony.

mis-
demeanour
under Act.
Power to
arrest.

7. If any person knowingly harbours any person whom he knows, or has reasonable grounds for supposing, to be a person who is about to commit or who has committed an offence under this Act, or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, or if any person having harboured any such person, or permitted to meet or assemble in any premises in his occupation or under his control any such persons, wilfully refuses to disclose to a superintendent of police any information which it is in his power to give in relation to any such person he shall be guilty of a misdemeanour and liable to imprisonment with or without hard labour for a term not exceeding one year, or to a fine, or to both imprisonment and a fine.

Penalty for
harbouring
spies.

8. A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Attorney-General :

Restriction
on prosecu-
tion.

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

9.—(1) If a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search warrant authorising any constable named therein to enter at any time any premises or place named in the warrant, if necessary, by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note, or document, or anything of a like nature or anything which is evidence of an offence under this Act having been or being about to be committed, which he may find on the premises or place or on any such person, and with regard to or in connexion with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

Search
warrants.

(2.) Where it appears to a superintendent of police that the case is one of great emergency and that in the interest of the State immediate action is necessary, he may by a written order under his hand give to any constable the like authority as may be given by the warrant of a justice under this section.

10.—(1.) This Act shall apply to all acts which are offences under this Act when committed in any part of His Majesty's dominions, or when committed by British officers or subjects elsewhere.

Extent of
Act and
place of
trial of
offence.

(2.) An offence under this Act, if alleged to have been committed out of the United Kingdom, may be inquired of, heard, and determined, in any competent British court in the place where the offence was committed, or in the High Court in England or the Central Criminal Court, and the Criminal Jurisdiction Act, 1802, shall apply in like manner as if the offence were mentioned in that Act, and the Central Criminal Court as well as the High Court possessed the jurisdiction given by that Act to the Court of King's Bench.

42 Geo. 3,
c. 85.

(3.) An offence under this Act shall not be tried by any court of general or quarter sessions, nor by the sheriff court in Scotland, nor by any court out of the United Kingdom which has not

jurisdiction to try crimes which involve the greatest punishment allowed by law.

50 & 51 Vict.
c. 29. (4.) The provisions of the Criminal Law and Procedure (Ireland) Act, 1887, shall not apply to any trial under the provisions of this Act.

Saving for
laws of
British
possession only. 11. If by any law made before or after the passing of this Act by the legislature of any British possession provisions are made which appear to His Majesty to be of the like effect as those contained in this Act, His Majesty may, by Order in Council, suspend the operation within that British possession of this Act, or of any part thereof, so long as that law continues in force there, and no longer, and the Order shall have effect as if it were enacted in this Act:

Provided that the suspension of this Act, or of any part thereof in any British possession shall not extend to the holder of an office under His Majesty who is not appointed to that office by the Government of that possession.

Interpreta-
tion. 12. In this Act, unless the context otherwise requires,—

Any reference to a place belonging to His Majesty includes a place belonging to any department of the Government of the United Kingdom or of any British possessions, whether the place is or is not actually vested in His Majesty;

The expression "Attorney-General" means the Attorney or Solicitor-General for England; and as respects Scotland, means the Lord Advocate; and as respects Ireland, means the Attorney or Solicitor-General for Ireland; and, if the prosecution is instituted in any court out of the United Kingdom, means the person who in that court is Attorney-General, or exercises the like function as the Attorney-General in England;

Expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect, or description thereof only be communicated or received; expressions referring to obtaining or retaining any sketch, plan, model, article, note, or document, include the copying or causing to be copied the whole or any part of any sketch, plan, model, article, note, or document; and expressions referring to the communication of any sketch, plan, model, article, note, or document include the transfer or transmission of the sketch, plan, model, article, note, or document;

The expression "document" includes part of a document;

The expression "model" includes design, pattern, and specimen;

The expression "sketch" includes any photograph or other mode of representing any place or thing;

The expression "superintendent of police" includes any police officer of a like or superior rank;

The expression "office under His Majesty" includes any office or employment in or under any department of the Government of the United Kingdom, or of any British possession;

The expression "offence under this Act" includes any act, omission, or other thing which is punishable under this Act.

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